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Audit Report

Natural Resources Conservation Service Wetlands Reserve Program Compensation for Easements Washington, D.C.

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UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

Washington, D.C. 20250



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REPLY TO

ATTN OF: 10099-3-SF

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FROM: Robert W. Young /s/
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for Audit

SUBJECT: Wetlands Reserve Program – Compensation for Easements

This report presents the results of the subject review. Your written responses to the official draft report are included in their entirety as exhibits with excerpts and the Office of Inspector General's (OIG) position incorporated into the relevant sections of the report. Based on the information in your written responses, we have accepted your management decision on all recommendations, except for Recommendations 21 and 22. Please follow your internal agency procedures in forwarding final action correspondence to the Office of the Chief Financial Officer.

Based on your written responses, management decision has not been reached on Recommendations 21 and 22. The information needed to reach management decision on these recommendations are set forth in the OIG Position section after each recommendation. In accordance with Departmental Regulation 1720-1, please furnish a reply within 60 days showing

the actual or planned timeframe for implementing each recommendation. Please note that the regulation requires a management decision to be reached on all findings and recommendations within a maximum of 6 months from report issuance, and final action to be taken within 1 year of each management decision.

We appreciate the courtesies and cooperation extended to us by members of your staff during the review.

Executive Summary

Results in Brief

This report presents the results of the Office of Inspector General's (OIG) audit of easement compensation for the Natural Resources Conservation Service's (NRCS) Wetlands Reserve Program (WRP). Under a conservation easement, WRP participants agree to restore farmland to wetlands, limiting future use of the land while maintaining ownership. Our review disclosed deficiencies with NRCS appraisal policies and procedures for WRP conservation easements that, if corrected, would result in substantial savings to the program. Although it has spent more than \$1 billion since 1995 acquiring WRP easements, and processed more than 7,000 appraisal reports, NRCS' controls are not currently adequate to ensure that its easement valuation process operates effectively, efficiently, and in compliance with applicable laws and regulations.

When Congress assigned NRCS to administer WRP in 1995, the agency did not have land acquisition experience or an appraisal infrastructure of realty staff, land appraisers, and surveyors. Although NRCS provided training to State office personnel to implement the program, we found that, 10 years later, NRCS has not established an appraisal staff to adequately administer the easement valuation function. For example, NRCS does not employ a chief appraiser to guide the agency's valuation policies or qualified appraisal personnel to review and approve WRP easement appraisals completed by contract appraisers. We also found that NRCS has not provided adequate guidance to its administrative staff and has not instituted adequate internal review processes to monitor easement valuation procedures.

When it implemented WRP 10 years ago, NRCS made various assumptions regarding the valuation of WRP properties. Fundamentally, NRCS staff assumed that lands subject to WRP easements had little or no remaining market value, even though landowners retained certain rights, including leasing recreational activities such as hunting and fishing for economic gain. The agency's assumption was based on the market conditions in 1995, when NRCS staff had little or no documentation of sales of WRP easement-encumbered properties. The Office of the General Counsel (OGC) cleared NRCS' policies for legal sufficiency at that time, noting that NRCS could devise a compensation formula and methodology to meet its program needs insofar as WRP easement compensation fell beneath the statute's payment limitation.

However, our audit found that basic assumptions underlying the WRP valuation process are no longer appropriate or valid. Because residual values of WRP easement-encumbered land can, in fact, be substantial, NRCS' policy of appraising the fair market agricultural value of the land without

considering the residual value results in a financial windfall to landowners. Compensating landowners for the fair market agricultural value of the land before the easement and disregarding residual values does not comply with the statutory formula for computing landowner compensation for WRP easements. The WRP statute, 16 U.S. Code 3837a (f), requires NRCS to limit landowner compensation to the difference between the fair market value (FMV) of the land before the WRP easement and the FMV of the land after the WRP easement (also known as the “residual value”). Using WRP easement appraisal information obtained from NRCS State offices and contract appraisers, we estimated that if NRCS had changed its policy to recognize residual values, it could have potentially saved the program more than \$159 million over 5 fiscal years in the 13 States reviewed. (See exhibit A-1.)

NRCS’ easement valuation procedures were predicated on OGC’s determination that WRP was exempt from the real property appraisal requirements found in 49 CFR part 24¹ because WRP was a voluntary program and lacked condemnation authority. As of February 3, 2005, however, this exemption language was removed from the CFR’s provisions. The expanded applicability of 49 CFR part 24 has created an inconsistency between the CFR’s real property acquisition requirements and NRCS’ current WRP easement valuation methodology. Therefore, we believe that NRCS should comply with 49 CFR part 24 for all acquisitions of real property, including voluntary acquisitions of permanent and temporary easements such as those undertaken by WRP. Because the CFR’s land acquisition provisions became effective after the completion of our fieldwork, we did not include them as criteria in our analysis of the WRP easement valuation procedures discussed in this report. We have, however, tailored our recommendations to reflect the CFR’s requirements.

Another weakness in the WRP easement appraisal process—the incorrect treatment of crop base on WRP easement lands—also resulted from NRCS’ lack of appraisal controls. Although the agency had issued guidance specifying that NRCS State offices should avoid the purchase of crop base if possible, agency officials did not clearly incorporate specific instructions into the WRP Manual. As a result, NRCS unnecessarily compensated landowners for crop base that could have been reassigned to other areas on the farm before the appraisal. Furthermore, NRCS had not issued any direction requiring landowners to retire federally purchased crop base with the Farm Service Agency (FSA). In California alone, our review of 17 WRP easement transactions identified 7 cases in which landowners continued receiving farm subsidy benefits totaling \$838,448 for crop base acres that had been purchased by the Federal Government. (See exhibit A-2.) Overall, NRCS staff in 10 of the 13 States we audited allowed WRP appraisals to include the

¹ Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs

value of crop base without ensuring that landowners permanently retired those bases with FSA.

Finally, we found that NRCS staff did not always inform FSA offices of recorded WRP easements. In three cases, landowners inappropriately received a total of \$258,411² in farm subsidy payments for crop base that remained assigned to the WRP easement-encumbered lands. (See exhibit A-2.)

Overall, we believe that the WRP easement valuation weaknesses discussed in this report constitute a material control weakness and should be included in the agency's annual Federal Managers' Financial Integrity Act report. By establishing effective controls over the valuation process, NRCS can deliver WRP at a substantial savings, assuring the public that its interest in this billion-dollar program is protected.

Recommendations In Brief

In the area of valuation controls, we recommend that NRCS work with appraisal managers at other Federal agencies to create and fill a chief appraiser position to serve as the agency's real property valuation expert. We also recommend that NRCS improve the accuracy and reliability of its WRP easement valuations by developing a technical appraisal review process to be completed by Federal review appraisers; that it modify and strengthen existing written easement valuation direction; and that it establish procedures for conducting periodic internal reviews specifically designed to assess the adequacy and operation of prescribed WRP easement valuation controls.

In the area of residual value, NRCS should modify its WRP appraisal methodology to recognize the residual value of easement-encumbered lands by directing appraisers to estimate WRP easement compensation as the difference between the FMV of the land before the easement and the FMV of the land after the easement.

In the area of crop base treatment, NRCS should fully incorporate its crop base direction in the WRP Manual. Also, NRCS should notify landowners applying for WRP easements that crop base included in WRP easement appraisals must be retired, and require landowners to complete the necessary FSA retirement forms. Finally, NRCS State office staff should provide a periodic listing of all recorded WRP easements to FSA State offices and NRCS district offices to prevent landowners from receiving farm subsidy payments on lands subject to WRP easements.

² This amount includes \$196,116 that is also included in the \$838,448 listed above.

We are also recommending that FSA managers coordinate with NRCS and take the appropriate actions to retire or redistribute crop base assigned to WRP easement-encumbered lands.

**Agency
Response**

NRCS concurred with the audit recommendations and agreed to complete corrective action by September 30, 2005. The complete NRCS response is shown in exhibit I of the audit report. FSA also agreed to take corrective action. The complete FSA response is shown in exhibit J of the report.

OIG Position

Based on the information provided in its July 22, 2005, written response, we have accepted management decision on the 20 recommendations addressed specifically to NRCS. In order to accept management decision on the two recommendations addressed to FSA, it needs to provide OIG with its determinations on the individual producers cited in the report.

Abbreviations Used in This Report

BLM	Bureau of Land Management
CFR	Code of Federal Regulations
CRP	Conservation Reserve Program
DCP	Direct and Counter-Cyclical Program
DOI	Department of the Interior
FMV	Fair Market Value
FS	Forest Service
FSA	Farm Service Agency
FY	Fiscal Year
GAO	Government Accountability Office
NHQ	National Headquarters
NRCS	Natural Resources Conservation Service
O&E	NRCS Oversight and Evaluation Staff
OGC	Office of the General Counsel
OIG	Office of Inspector General
OMB	Office of Management and Budget
UASFLA	Uniform Appraisal Standards for Federal Land Acquisitions
USC	United States Code
USDA	United States Department of Agriculture
USFWS	United States Fish and Wildlife Service
USPAP	Uniform Standards of Professional Appraisal Practice
WRP	Wetlands Reserve Program

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Background and Objectives

Background

WRP, authorized in 1990 by revisions to the Food Security Act of 1985, has been managed by NRCS since 1995. WRP is a voluntary program that provides financial incentives to landowners to take marginal agricultural land out of production and return it to wetlands. The program is offered on a continuous basis and provides landowners nationwide an opportunity to establish long-term conservation easements that enhance and protect wildlife habitat. WRP is available in all 50 States.

When a landowner enrolls land in WRP, he or she grants an easement to the United States. Conservation easements are legally binding, permanent deed restrictions (encumbrances) voluntarily placed on a parcel of land by the owner. Participants voluntarily limit future use of the land but retain ownership. In the case of WRP conservation easements, landowners reserve five specific rights: title, quiet enjoyment, control of access, recreational uses (including leasing of hunting and fishing rights), and subsurface resources.

To begin the WRP application process, landowners visit their local NRCS district office and submit an application for participation in WRP, selecting one of three enrollment options:

- *Permanent easement.* Easement compensation for this option equals the lesser of the agricultural value of the land as determined by an appraisal, a State-established geographic area rate, or an amount offered by the landowner.
- *30-year easement.* Easement compensation through this option is 75 percent of the amount that would be paid for a permanent easement.
- *Cost-share agreement.* NRCS pays 75 percent of the cost of the restoration, but does not place an easement on the land.³

Each of the applications submitted by eligible landowners is evaluated and ranked according to various factors including the duration of the easement, wetland functions and values, and restoration and easement purchase costs. After ranking, eligible applications are selected and approved for funding. The State conservationist sends each landowner a letter of tentative acceptance, along with a notification of intent to continue.

³ Because this enrollment option does not involve the placement of a conservation easement on the landowner's property, it is not discussed in this report.

Once a landowner has indicated the intent to continue, he or she is considered enrolled in the program and NRCS staff arrange for an appraisal of the agricultural value of the offered acres.⁴ The appraisal is reviewed and approved by NRCS staff, and the landowner is offered, for a permanent easement, the lesser of the land's appraised agricultural value, the State's geographic area rate (if applicable), or the landowner's offer.

After the compensation amount has been established, the landowner and NRCS staff sign an option agreement to purchase. This agreement is a legally binding contract that authorizes NRCS staff to proceed with the easement acquisition and obligate WRP easement acquisition funds. The acreage amounts and compensation cited in the option agreement are estimates based on information provided by the landowner and are often adjusted after a survey of the easement area has been completed.

More than a decade has passed since WRP was first authorized. During that time, the program has expanded from a nine-State pilot program limited to a mere 50,000 easement acres, to a nationwide easement acquisition effort involving more than a million of acres of land. At the end of fiscal year 2003, WRP had a total enrollment level of 1,470,998 acres on 7,831 projects. Approximately 80 percent of these acres were subject to permanent easements; 14 percent were 30-year easements; and 6 percent were cost-share agreements. WRP is slated to become even larger. The 2002 Farm Bill reauthorized WRP through fiscal year 2007 and nearly doubled the size of the program, increasing the acreage enrollment limit to 2,275,000 acres. The Congressional Budget Office estimates increased spending of \$1.5 billion over the next 10 years.

In addition to WRP, NRCS purchases conservation easements through its Grassland Reserve Program (GRP), Farm and Ranch Lands Protection Program (FRPP), and Emergency Watershed Program (EWP). In FRPP, conservation easements are valued using a "before and after" appraisal methodology—contract appraisers estimate the fair market value of the whole property before the conservation easement, and the fair market value of the whole property after the conservation easement. The difference between these appraisal estimates is the value of the easement. EWP, on the other hand, employs the same easement valuation methodology used by WRP—easement compensation is the lesser of fee simple appraised values based on agricultural uses, geographic area rates, and landowner offers.

In a 2002 report,⁵ the Government Accountability Office (GAO) expressed concerns about NRCS' EWP easement valuation methodology. The report

⁴ A formal appraisal is not required in cases where the State conservationist determines that the landowner's offer "is clearly, beyond any reasonable doubt, less than any reasonable person would consider the full authorized easement payment amount."

⁵ GAO-02-278R, California Land Appraisals, dated January 2003.

stated that, as a routine practice, NRCS did not consider the lands' residual value in making its appraisals. NRCS essentially assumed that the lands' only use was agricultural and that by purchasing an easement barring future agricultural use of the land there was no residual value for NRCS to deduct. The report further stated that NRCS had not produced a financial analysis to support its view, and that officials at other agencies were concerned about NRCS' practice of not considering the lands' residual value because such practice might result in higher appraisal valuations. The GAO report concluded that NRCS should consider re-examining its approach and perform a financial analysis to support its position.

NRCS believed the use of this alternate easement valuation methodology for EWP and WRP was acceptable because the agency had elected to exempt both programs from the real property acquisition requirements in 49 CFR part 24. This was possible because compliance with the CFR's requirements was mandatory for all Federal land acquisition programs except those involving voluntary transactions or programs lacking eminent domain authority.

49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, contains a number of appraisal requirements designed to ensure fair and consistent treatment of landowners involved in Federal land acquisitions. The CFR requires, among other things:

- Compensation equal to the fair market value of the property, taking into account the value of benefits to any remaining property (residual value).
- Detailed appraisals that reflect established and commonly accepted Federal appraisal practice including, to the extent appropriate, compliance with Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA).
- Technical review and approval of all appraisal reports by qualified review appraisers to assure the appraisals meet applicable requirements and correctly estimate values.

In December 2003, the Federal Highway Administration, as the lead Federal agency, proposed revisions to 49 CFR part 24 that included removing the exception language. Early in 2005, the proposed revisions were finalized, becoming effective on February 3 of that year. Under the amended language, the CFR's real property acquisition requirements now apply to "any acquisition of real property for a direct Federal program or project,"⁶

⁶ Except acquisitions for projects or programs undertaken by the Tennessee Valley Authority or the Rural Utilities Service.

including the acquisition of permanent and temporary easements.⁷ We believe the expanded applicability of the CFR's real property acquisition requirements will significantly impact the WRP easement valuation processes and procedures currently used by NRCS and discussed in this report.

Objectives

The objective of the audit was to review the policies and procedures NRCS had implemented for the valuation of WRP conservation easements in order to determine if landowner compensation met the requirement of 16 U.S.C. 3837a, limiting payments to the FMV of the land before the WRP easement less the FMV of the land after the easement. To accomplish this objective, we reviewed the agency's use of contract appraisals, including its treatment of residual values and crop base acres.

⁷ 49 CFR part 24, subpart B, section 24.101(c)

Findings and Recommendations

Section 1 Appraisal Controls

Finding 1

Controls Over the Easement Appraisal Process Were Inadequate

NRCS lacked sufficient controls over the WRP easement appraisal process. Specifically, we found that NRCS (1) had not developed an infrastructure of qualified appraisers to support the appraisal function; (2) had not provided adequate guidance to its staff; and (3) had not instituted adequate internal review processes to monitor program operations. Without these controls, NRCS cannot ensure that its appraisal process is operating effectively, efficiently, and in compliance with laws and regulations governing the determination of WRP easement compensation.

*Standards for Internal Control in the Federal Government*⁸ directs Federal managers to establish organizational structures that reasonably ensure programs are managed with integrity and in compliance with applicable laws, and that assets are safeguarded against waste, fraud, and abuse. Appropriate organizational structures are reflected in competent staff, separation of key duties, adequate written guidance, and continuous monitoring and oversight.

When NRCS was tasked with implementing WRP in June 1995, the agency had no land appraisers, no surveyors, and no office staff with experience in the acquisition and management of lands. In the absence of a qualified appraisal staff, NRCS trained its existing personnel to implement the program on the ground. Despite the agency's efforts, our audit disclosed that additional controls are needed to assure the integrity of the WRP appraisal process.

Lack of Qualified Appraisal Staff

We found that, nearly 10 years after assuming responsibility for the program, NRCS had no chief appraiser to provide overall direction and supervision of the easement valuation process and no qualified review appraisers to ensure valuation policies and procedures were accurately, consistently, and independently carried out. The agency's lack of qualified appraisal staff was evident in the following conditions relating to easement appraisals and review procedures:

⁸ United States General Accounting Office, November 1999

- The agency’s easement appraisal methodology did not follow established appraisal procedures and statutory provisions, and potentially overstated WRP easement acquisition costs by substantial amounts. (See Finding 2.)
- A recent GAO review found the same questionable valuation practices in another NRCS conservation easement program and concluded that the agency had performed no analysis to support its easement appraisal methodology.⁹
- Contract appraisers routinely provided WRP easement compensation estimates that were contrary to NRCS policy and appraisal instructions. (See below.)

The Office of Federal Procurement Policy Letter 93-1,¹⁰ which establishes the requirements for management oversight of service contracting, specifies that when contracting for highly specialized or technical services, agencies should ensure that a sufficient number of trained and experienced officials are available to manage and oversee the contract administration function: “Agency officials need to be able to make sound judgments on what the contract requirements should be...and whether the contractor is performing according to the contract terms and conditions.” Uniform Standards for Professional Appraisal Practice (USPAP)¹¹ specify that qualified review appraisers are the only individuals technically qualified to render opinions on the analysis and value estimates contained in appraisal reports.

Under NRCS policy, only 10 percent of contracted WRP easement appraisal reports were required to be reviewed by qualified appraisers.¹² The bulk of the easement appraisal reports was reviewed by NRCS staff who did not have the knowledge and experience required to perform this critical responsibility. None of the staff we interviewed at the NRCS National Headquarters (NHQ) or at the 13 NRCS State offices possessed the appraisal certifications, experience, or training required to evaluate whether contracted appraisal reports were based on adequate and relevant data, used required appraisal methods and techniques, and estimated values that were appropriate and properly supported. NRCS staff’s administrative reviews consisted of deciding if contracted values seemed appropriate based on their impressions of prevailing land values or estimates they had seen in other appraisal reports. Some of the contracted values reviewed in this informal fashion exceeded \$5 million. Other Federal agencies with similar realty programs limit the

⁹ GAO-02-278R, California Land Appraisals, dated January 2003

¹⁰ Management Oversight of Service Contracting (May 18, 1994)

¹¹ Effective January 1, 2000

¹² WRP Manual 514.28(d) specifies that, when selecting appraisals for technical review, NRCS staff are to first identify appraisals with “questionable land values.” A random selection process is to be used to select additional appraisals that do not fall into the “questionable” category.

approval of such significant values to highly trained, certified appraisers with years of practical appraisal experience.

In addition to lacking technical appraisal expertise, NRCS staff also did not identify contract non-compliance and mathematical inaccuracies during the administrative review process.¹³ For example:

- Contract appraisers in all 13 reviewed States routinely included development, recreation, water, or mineral rights in WRP easement estimates, even though NRCS appraisal instructions directed exclusion of such values. (See Finding 2.)
- Contract appraisers in 10 of the 13 reviewed States included the value of crop base¹⁴ in WRP easement compensation estimates, even though doing so was contrary to NRCS policy. (See Finding 3.)
- Appraisal reports contained mathematical errors that misstated estimated values.¹⁵

We also found that NRCS staff responsible for administratively reviewing and approving the WRP easement appraisal reports were the same individuals responsible for processing WRP easement realty transactions. Assigning staff the dual role of appraisal review and transaction processing creates a conflict between realty staff's duty to approve and complete the greatest number of easement transactions, and appraisal review staff's duty to ensure only transactions with credible and supportable appraisals are approved. Thus, any delays in approving deficient easement appraisal reports directly impacts State office funding and realty staff's easement transaction accomplishments.

Inadequate Policies and Procedures

Easement valuation procedures contained in the WRP Manual were either ineffective or provided inadequate guidance to NRCS staff. We determined that the manual (1) did not sufficiently describe the function and timing of technical appraisal reviews and how NRCS staff should respond to them; (2) did not include directions for updating appraised values when easement acres changed; and (3) did not emphasize the mandatory nature of the easement appraisal instructions.

¹³ A complete listing of valuation control weaknesses disclosed by our audit is shown in exhibit C.

¹⁴ Crop base acres serve as the basis for Federal farm subsidy payments and can add considerable value to appraisal estimates.

¹⁵ For example, errors in one report we reviewed understated a WRP easement value by \$125,000 (28 percent of the original appraised value). Further review revealed similar errors in six other appraisal reports completed by the same contractor that staff did not detect and correct.

Technical Appraisal Reviews

The WRP Manual directed that certified land appraisers be selected to conduct technical appraisal reviews, but it did not otherwise provide knowledge and experience requirements. According to the Appraisal Institute,¹⁶ State certifications should be considered minimum requirements for professional real estate appraisers. Professional designations, conferred by appraisal organizations, are far more extensive and provide a better indication of appraiser abilities, advanced education, training, and experience. By limiting review appraiser qualifications to something as broad as “certified land appraiser,” NRCS had no assurance that the contractor was qualified to review the selected WRP easement appraisals, which vary in content and complexity. In fact, NRCS’ technical reviewer qualifications were less exacting than the qualifications for the contract appraisers whose work they oversaw.

The WRP Manual also did not specify the timing and frequency of technical appraisal reviews. NHQ staff believed that State office staff would order these reviews on an annual basis, prior to signing purchase option agreements.¹⁷ We found, however, that State offices often did not schedule technical appraisal reviews until well after landowners had been paid.

Further, the WRP Manual provided no direction for responding to technical review findings and recommendations. In fact, California State Office staff disregarded significant valuation deficiencies noted in technical reviews. In an August 2000 memo to NRCS, a technical review appraiser contracted by the California State Office reported that the agency’s appraisal instructions were subject to misinterpretation by contract appraisers, that easement values were being overstated, and that the quality of the appraisal reports needed improvement. Agency staff did not acknowledge the validity of the review appraiser’s critique. In an internal memo, NRCS dismissed the review appraiser’s comments as “not responsive to the assignment” and stated that the appraisal reports had been technically reviewed with “no significant exceptions noted.” Three years after this technical review was completed, we identified the same valuation deficiencies during our review of 17 WRP easement appraisal reports at the California State Office.

¹⁶ The Appraisal Institute is an international membership association of professional real estate appraisers whose mission is to uphold professional credentials, standards of professional practice, and ethics consistent with the public good.

¹⁷ An Option Agreement to Purchase is a legally binding contract between NRCS and the applicant specifying the approximate WRP easement acreage and purchase price.

Finally, even though NRCS listed contract administration (which includes accepting and rejecting contracted appraisal reports) as an inherently governmental function in its annual inventory of agency activities,¹⁸ it allowed private contractors, rather than Federal appraisers, to perform technical appraisal reviews.

Updating Easement Values

WRP Manual instructions did not address the need to update previously estimated appraisal values when easement acreage changed. Section 514.12 specified that landowners could substitute land for acres initially offered on the WRP application as long as the change occurred before the easement was recorded and the substituted land possessed a program ranking equal to or greater than the original offering.¹⁹ However, when acreage substitutions occurred after the appraisal, the manual offered no direction for ensuring substituted acreage values were correct and that the estate eventually acquired matched the estate appraised.

Twenty-three of 30 WRP transactions we reviewed had final easement acreage amounts that differed from the acres originally valued in the appraisal reports. We reviewed the acreage adjustments and noted the following procedural weaknesses:

- There was no process requiring staff to consult with contract appraisers to ensure value adjustments were properly done.
- Values assigned to substituted acreage did not always reflect the actual utility of the land.²⁰
- Changes between original and final easement acres were not adequately documented and reconciled.

These procedural weaknesses increased the likelihood that landowners would not be properly compensated.

¹⁸ The Federal Activities Inventory Reform Act (P.L. 105-270) directs Federal agencies to issue each year an inventory of all commercial and inherently governmental activities performed by Federal employees.

¹⁹ A parcel's ranking is based on easement and restoration costs, availability of matching funds, significance of wetland attributes, estimated success of restoration measures, and the duration of the easement.

²⁰ Farm acreage has different agricultural utilities. Acreage deemed to be prime cropland would generally have a higher appraised per acre value than land deemed to be fair or poor cropland.

Easement Appraisal Instructions

NRCS State office staff did not know that WRP appraisal instructions cited in the manual were mandatory and that any changes to those instructions required NHQ approval.

WRP Manual 514.28(b) required State office staff to order an appraisal once a landowner indicated the intent to offer an easement and referred staff to an exhibit for sample appraisal instructions. NHQ staff considered these sample instructions to be mandatory, citing consistent instructions as a control over appraisal accuracy. According to NHQ staff, any State office wishing to create alternative instructions would have to first obtain headquarters' approval.

Staff we interviewed at 5 of the 13 State offices considered the manual's appraisal instructions to be a guide, which they had the authority to modify in accordance with their local needs. Two of these State offices had created appraisal instructions that differed significantly from the manual direction without obtaining NHQ approval.

Ineffective Internal Review Process

NRCS did not have an adequate process for conducting periodic internal reviews and evaluations to assess WRP easement valuation controls and to follow up on previously identified control weaknesses. As a result, the systemic valuation weaknesses discussed in this report were not addressed, impacting the accuracy and reliability of WRP easement valuations.

OMB Circular No. A-123²¹ directs agency managers to continuously monitor the effectiveness of management controls associated with their programs. Such monitoring provides the basis for management's annual assessment of and report on management controls, as required by the Federal Managers' Financial Integrity Act of 1982.

NRCS' Oversight and Evaluation (O&E) staff provides the internal review function for the agency. O&E conducts reviews to assess the quality, accountability, and effectiveness of NRCS programs in accordance with laws, regulations, policies, and procedures. O&E had performed six WRP reviews since 1999. However, none of those reviews addressed the operation and effectiveness of prescribed appraisal policies and procedures. Even a 2004 review, conducted to identify the cause of increasing WRP easement values, did not include an assessment of the appraisal process. O&E staff stated they were not technically qualified to review appraisals.

²¹ Management Accountability and Control, revised June 21, 1995

In summary, NRCS should recognize the appraisal function as a critical part of its organization and, at a minimum, establish and staff a chief appraiser position at the NHQ level. This valuation expert should be responsible for policies and procedures relating to the easement appraisal process, for providing valuation training and guidance to State office personnel, and for participating in the selection of contract appraisers and Federal review appraisers. The chief appraiser should also be responsible for conducting compliance inspections of each State office to ensure real property valuation procedures and standards are being maintained and properly implemented. NRCS should also develop a technical appraisal review process for all WRP easement appraisal reports to be completed by Federal review appraisers, modify and strengthen existing written easement valuation direction, and establish procedures for conducting periodic internal reviews specifically designed to assess the adequacy and operation of prescribed WRP easement valuation controls.

Amended Real Property Acquisition Requirements Affect WRP

As noted in the background of this report, 49 CFR part 24 was recently amended. The CFR's real property acquisition requirements now apply to all direct acquisitions for Federal programs and projects by Federal agencies,²² including acquisitions of permanent and temporary easements. The expansion of the CFR's applicability impacts several of the WRP easement valuation procedures discussed above.

- CFR 24.102(g) requires appraisers to update appraised values when there are material changes in the character or condition of the property, and directs agencies to reestablish landowner compensation when the new information indicates a change in the purchase offer is warranted. Procedures in WRP Manual 514.12, however, currently allow NRCS staff to make "substantial changes" to offered easement acreage with no requirement that the appraiser or review appraiser be involved, or that the landowner offer be adjusted to reflect the modified acreage value.
- CFR 24.102(n)(2) requires that persons negotiating real property acquisitions cannot supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work. The intent of this provision is to ensure appraisal independence and to prevent inappropriate influence. In contrast, NRCS' current policy allows NRCS realty staff, who are responsible for processing WRP easement transactions, to contract, review, accept, or reject all appraisal reports.

²² Except for acquisitions undertaken by the Tennessee Valley Authority or the Rural Utilities Service

- 49 CFR 24.104 requires agencies to have an appraisal review process that, at a minimum, includes technical reviews of *all* appraisals by qualified review appraisers. Review appraisers are to identify each appraisal report as recommended (approved as the basis for landowner compensation), accepted (meets all requirements, but not selected as recommended or approved), or not accepted. Current direction in WRP Manual 514.28(d), however, only requires technical reviews for 10 percent of appraisal reports.
- 49 CFR 24.103(d) requires agencies to review the experience, education, training, certification, licensing, designations, and other qualifications of appraisers and review appraisers, and to use only those with qualifications consistent with the scope of the appraisal assignment. In contrast, WRP Manual 514.28 only requires that WRP easement appraisals be done by “certified, general real property appraisers,” and that technical reviews be conducted by “certified land appraisers,” with no other qualifications or competencies specified.

The amendments to 49 CFR part 24 became effective after the completion of our fieldwork and so were not included as audit criteria for this finding. We have, however, referenced the applicable CFR real property acquisition requirements to supplement and support our recommendations to NRCS.

Recommendation 1, to the NRCS Chief

Work with appraisal managers at other Federal agencies such as the Forest Service (FS) or the Department of the Interior (DOI) to create and fill a chief appraiser position.

Agency Response.

NRCS agrees that a chief appraiser is a valuable addition to the NRCS staff, and, thus, has employed a State-certified Chief General Appraiser to serve in this capacity.

OIG Position.

OIG accepts NRCS’ management decision for this recommendation.

Recommendation 2, to the NRCS Chief

Modify technical appraisal review procedures in the WRP Manual to conform with 49 CFR 24.104. At a minimum, a qualified review appraiser should examine the presentation and analysis of market information in all

appraisals to assure they meet the definition of appraisal found in 49 CFR 24.103 and other applicable requirements, including, to the extent appropriate, the UASFLA, and support the appraiser's opinion of value.

Agency Response.

The WRP Manual will be modified to conform to 49 CFR 24. It is our intent to initiate implementation in fiscal year 2006 with the new funding cycle. Estimated completion date is September 30, 2005.

OIG Position.

OIG accepts NRCS' management decision for this recommendation.

Recommendation 3, to the NRCS Chief

Modify direction in WRP Manual 514.28 to conform with appraiser and review appraiser qualification requirements in 49 CFR 24.103(d), including (1) establishment of criteria for determining minimum qualifications and competency of appraisers and review appraisers consistent with the scope of work for the appraisal assignment, and (2) agency review of the experience, education, training, certification, licensing, designations, and other qualifications of appraisers and review appraisers, using only those determined by the agency to be qualified.

Agency Response.

The WRP Manual will be modified to include appraiser and review appraiser qualifications, which include being in good standing as a State-certified general appraiser, formal education in conservation easement appraisal training, and, for technical reviewers, at least 40 classroom hours of training in completing technical appraisal reviews. Specifications of work for both appraisers and review appraisers have been written to clarify requirements and deliverables. Estimated completion date is September 30, 2005.

OIG Position.

OIG accepts NRCS' management decision for this recommendation.

Recommendation 4, to the NRCS Chief

Ensure that staff responsible for processing or negotiating WRP easement acquisitions do not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work.

Agency Response.

WRP Manual changes will reflect guidance to eliminate potential conflicts of interest and require separation of duties. It is recognized that line officers are responsible for setting priorities for accomplishing the necessary work; this function is unchanged, as the technical performance of the technical appraisal process is unaffected. Estimated completion date is September 30, 2005.

OIG Position.

OIG accepts NRCS' management decision for this recommendation.

Recommendation 5, to the NRCS Chief

Modify the instructions in WRP Manual 514.28(d) to direct NRCS staff to submit all WRP easement appraisal reports to qualified Federal review appraisers for examination and approval directly after the contracted appraisal reports have been completed. The review appraiser should, prior to acceptance, seek necessary corrections or revisions, and should identify each appraisal report as recommended, accepted, or not accepted.

Agency Response.

Part 514.28 (d) of the WRP Manual, "Determining Easement Values," will be modified to require the submission of all WRP easement appraisal reports to a qualified Federal review appraiser for technical appraisal reviews prior to issuing any offer and for the reviewer to work with the appraiser to obtain an acceptable appraisal. Estimated completion date is September 30, 2005.

OIG Position.

OIG accepts NRCS' management decision for this recommendation.

Recommendation 6, to the NRCS Chief

Modify WRP Manual 514.12 direction to conform with 49 CFR 24.102(g) and require that changes in appraised easement acreage or other conditions of the estate appraised be made in consultation with the appraiser, who will update the original appraisal or conduct a new appraisal if necessary.

Agency Response.

Part 514.12 of the WRP Manual, "Determining Easement Values," will be modified to conform to the requirements 49 CFR 24.102 (g) and require changes in appraised easement acreage, land proposed for easement, or other conditions of the estate be made in consultation with the appraiser, who will modify the appraisal and conduct a new appraisal if necessary. Estimated completion date is September 30, 2005.

OIG Position.

OIG accepts NRCS' management decision for this recommendation.

Recommendation 7, to the NRCS Chief

Modify WRP Manual 514.12 direction to require that any updates or changes to appraised values be reviewed and approved by a review appraiser. If the new appraisal information indicates that a change in the purchase offer is warranted, promptly reestablish just compensation and offer that amount to the owner in writing.

Agency Response.

Part 514.12 of the WRP Manual, "Determining Easement Values," will be modified to require that updates or changes to appraised values be reviewed and approved by a review appraiser. If the new appraisal information indicates that a change in the purchase offer is warranted, NRCS will promptly reestablish just compensation and offer that amount to the owner in writing. Estimated completion date is September 30, 2005.

OIG Position.

OIG accepts NRCS' management decision for this recommendation.

Recommendation 8, to the NRCS Chief

Modify WRP Manual 514.12 direction to require that WRP easement acreage additions, deletions, and substitutions be fully documented and reconciled to the original acreage cited in the appraisal reports.

Agency Response.

Part 514.12 of the WRP Manual, "Determining Easement Values," will be modified to require that WRP easement acreage additions, deletions, and

substitutions be fully documented and reconciled to the original acreage in the appraisal reports by the original appraiser. Estimated completion date is September 30, 2005.

OIG Position.

OIG accepts NRCS' management decision for this recommendation.

Recommendation 9, to the NRCS Chief

Modify the direction in WRP Manual 514.28(b) to require use of the referenced appraisal instructions, and direct staff to refer any proposed changes to these instructions to NRCS approved valuation experts for review and approval.

Agency Response.

Part 514.28 (b) of the WRP Manual, "Eligible Restoration Practices," will be modified to require use of the appraisal instructions and clarify that the State Conservationist must have prior approval from the Deputy Chief for Programs prior to any policy changes. Estimated completion date is September 30, 2005.

OIG Position.

OIG accepts NRCS' management decision for this recommendation.

Recommendation 10, to the NRCS Chief

Establish procedures for conducting, by qualified staff, periodic internal reviews and evaluations specifically designed to assess the adequacy and operation of prescribed WRP easement valuation controls and for implementing prompt corrective actions.

Agency Response.

The WRP Manual will be modified to reflect procedures for conducting periodic reviews and evaluations by qualified staff specifically designed to assess the adequacy and operation of prescribed WRP easement valuation controls and for implementing prompt corrective action. Estimated completion date is September 30, 2005.

OIG Position.

OIG accepts NRCS' management decision for this recommendation.

Finding 2 WRP Easement Payments Exceeded Statutory Limitations

We found evidence that NRCS' easement compensation exceeded WRP statutory payment limitations. Rather than estimating easement compensation as the difference between the FMV of the land before and after the easement, NRCS management used an alternative compensation formula and appraisal methodology based on appraisal assumptions that we determined to be outdated and invalid. If NRCS had used conventional easement valuation methodology, we believe the agency could have achieved program savings of at least \$159 million over the last 5 fiscal years in the 13 States reviewed.

WRP statute, 16 U.S.C. 3837a (f), specifies WRP easement compensation cannot exceed the FMV of the land before the easement less the FMV of the land after the easement (the residual value). The "before and after" valuation methodology cited in the statute has long been held by Federal courts as the best measure of easement compensation. Comparing land values before and after the restrictions imposed by the easement ensures that landowners are compensated only for those property rights they have relinquished. In the case of WRP easement deeds, landowners retain the rights to record title, quiet enjoyment, control of access, subsurface resources, and undeveloped recreational uses such as hunting and fishing and the leasing of such rights for economic gain.

Nearly all Federal agencies involved in acquiring conservation easements, including NRCS, estimate landowner compensation as the difference between the FMV of the land before and after the easement restricts use of the property. NRCS' WRP is one of the few exceptions. Rather than using the "before and after" valuation methodology prescribed by Federal appraisal standards,²³ NRCS adopted a process in which landowner compensation for WRP easements equals the lesser of (1) the agricultural value of the land based on limited market appraisals, (2) geographic area rates based on agricultural land values in each State, or (3) the landowner's offer. The process was established in 1995 based on the following assumptions:²⁴

²³ Uniform Appraisal Standards for Federal Land Acquisitions, dated December 20, 2000

²⁴ Details regarding the NRCS assumptions were provided to OIG by OGC on March 16, 2005.

- NRCS tied WRP easement compensation to the fee simple²⁵ agricultural market value of the land rather than its FMV before and after the WRP easement. NRCS made the programmatic assumption that limiting payments to “agricultural only” values would comply with the compensation cap set by the statute.
- NRCS believed the WRP easement deed allowed the agency to control the physical characteristics of the land to such an extent that any residual values associated with future activities on easement-encumbered lands were either aberrations from the norm, too speculative to be included in the appraisal process, or the result of Federal “project influence.”²⁶
- NRCS believed costs associated with quantifying residual values were prohibitively high, potentially increasing the program’s delivery costs from several hundred to several thousand dollars per transaction.
- NRCS believed the establishment of geographic area rates, used in conjunction with agriculturally based appraisals, would limit landowner compensation to something less than the amount set by the statute.

OGC cleared the WRP regulations,²⁷ which included the easement valuation methodology, for legal sufficiency in 1995, based on the agency’s determination that such a system would deliver the program most efficiently and effectively. OGC noted that NRCS could devise a compensation formula and methodology to meet its program needs insofar as WRP easement compensation fell beneath the statute’s payment limitation (i.e., the FMV of the land before the easement less the FMV of the land after the easement).

Based on our analysis of recent WRP easement appraisals, sales transaction evidence, and interviews with NRCS staff and 18 contract appraisers in 13 States, we concluded that NRCS’ easement valuation process had provided potentially significant windfalls to landowners. Using “before” and “after” land value estimates provided by NRCS contract appraisers, we estimated that NRCS might have saved the program at least \$159 million over the last 5 fiscal years in the 13 reviewed States if it complied with the statute limitations. Although our analysis is based on estimates rather than

²⁵ Fee simple is the estate in land that a person has when the land is given to him and his heirs absolutely, without any end or limit put to his estate. Fee simple appraisals do not analyze a parcel’s “before and after” value because they assume all ownership rights will be transferred.

²⁶ Project influence refers to specific valuation procedures cited in Uniform Appraisal Standards for Federal Land Acquisitions. (UASFLA). It is not discussed in this finding because of its technical nature, and because it has no effect on this report’s conclusions.

For a discussion of project influence in connection with the valuation of WRP conservation easements, refer to exhibit H.

²⁷ 7 CFR part 1467 – Wetlands Reserve Program

specific transaction information, it serves to illustrate the potential magnitude of NRCS' easement valuation policies. (See exhibit D.)

Easement Appraisals Did Not Reflect Agricultural Only Values

We found that the WRP appraisals often reflected the true FMV of the lands before being encumbered by WRP easements rather than “agricultural only” values, as NRCS staff generally believed. NRCS staff at both the NHQ and State office levels assumed that contract appraisers were excluding the contributory value of non-agricultural rights, such as development, minerals, and recreation. NRCS staff felt that since WRP easement appraisals were based on agricultural only values, and the WRP easement precluded future agricultural use of the land, there was no residual value to deduct from the appraisals.

We found, however, that many WRP easement appraisals represented the actual FMV a typical buyer would expect to pay for the unencumbered property. NRCS contract appraisers did not limit values to “agricultural only” rights because NRCS appraisal instructions directed them to estimate fee simple (complete ownership) agricultural values; they interpreted this to mean the FMV of the land with agriculture as the highest and best use. Since most of the lands slated for WRP easements consisted of marginal farmland, an agricultural highest and best use generally represented the actual FMV of the land before being encumbered by the WRP easement. Contract appraisers stated that valuations of “agricultural only” rights would be difficult to estimate because the sale prices of comparable properties, used to quantify the value of the WRP easement lands, reflect the values of all property rights, not just those related to agriculture.

Land Subject to WRP Easements Retained Non-Speculative Residual Values

Because WRP easement appraisals generally estimated the FMV of lands before being encumbered by the WRP easements, landowner compensation based on such appraisals could only meet the statute's payment limitations if the residual value of those lands was zero. This was not the case. Not only did the majority of lands subject to WRP easements retain values that should have been recognized in the appraisal process, some lands were actually worth more subject to the WRP easement than as marginal farmland.

NHQ staff believed that lands subject to WRP easements had no residual value because landowners could no longer farm the land and retained only five specific rights.²⁸ They further believed that the wording of the WRP easement granted NRCS virtual control of a parcel's future use because it allowed agency staff to undertake any activities necessary to restore, protect,

²⁸ Title, quiet enjoyment, control of access, recreational uses (including leasing of hunting rights), and subsurface resources.

maintain, or enhance the wetland and other natural values of the easement area. Consequently, agency staff considered residual values associated with a landowner's reserved rights to be either aberrations from the norm or too speculative to be recognized in the appraisal process. Our interviews of NRCS contract appraisers and review of WRP easement transaction data suggest that these assumptions were incorrect.

Although NHQ staff expressed the opinion that the vast majority of properties had little or no market value after the WRP easements were in place, we found that significant residual values were the rule rather than the exception. According to 17 of the 18 NRCS contract appraisers we interviewed, the lands encumbered by WRP easements generally retained residual values related to private and leased hunting opportunities, personal recreation, and the inherent value of land ownership. These NRCS contract appraisers, responsible for WRP easement valuations in 12 of the 13 reviewed States, estimated typical residual values of WRP easement-encumbered lands ranging from \$200/acre to \$2,500/acre. Where hunting was a particularly popular activity, NRCS contract appraisers stated that the value of WRP easement-encumbered lands might actually exceed the value of the lands before the easement, in some cases by more than 200 percent, because NRCS' planned restoration work enhanced the property's recreation and hunting utility.

To support and supplement the testimonial evidence provided by the 18 NRCS contract appraisers, we asked them and other appraisers at the Federal, State, and county levels to provide examples of actual WRP easement sales. In total, the appraisers provided documentation of 114 sales of WRP easement-encumbered land, representing transactions in 8 of the 13 sampled States; residual values for those sales ranged from \$60/acre to \$3,600/acre. (See exhibit E.) We were also able to identify the residual values of easement-encumbered lands for 14 of the 37 WRP easement transactions we reviewed at the California, Minnesota, and Iowa NRCS State Offices.²⁹ Residual values for these 14 easement-encumbered properties ranged from \$125/acre to \$1,500/acre, or 8 percent to 53 percent of the amount NRCS had originally paid the landowners. (See exhibit F.)³⁰

We also conducted a search of Internet real estate sites and found numerous WRP easement-encumbered lands selling for appreciable amounts throughout the country. For example:

- In Louisiana, 1,000 acres of hunting land subject to a WRP easement selling for \$4,000,000 (\$4,000/acre), 572 acres for \$630,000

²⁹ Our original sample included a total of 30 easement transactions in California, Minnesota, and Iowa. During our work at the California State Office, we expanded our review to include seven additional easement appraisal reports.

³⁰ These market values were established by sales transactions or appraisals of WRP easement-encumbered properties.

(\$1,100/acre), 1,001 acres for \$800,800 (\$800/acre), and 1,620 acres for \$972,000 (\$600/acre).

- In Missouri, 195 acres of WRP land on the market for \$300,000 (\$1,538/acre), 100 acres for \$129,500 (\$1,295/acre), and another 128 acres for \$172,800 (\$1,350/acre).
- In Arkansas, 2,650 acres of WRP easement-encumbered land selling for \$6,227,500 (\$2,350/acre), 1,248 acres selling for \$2,620,000 (\$2,099/acre), and 855 acres selling for \$684,000 (\$800/acre).
- In Mississippi, 2,220 acres of hunting land subject to a WRP easement selling for \$2,200,000 (\$1,000/acre), 406 acres for \$363,370 (\$895/acre), and 400 acres for \$320,000 (\$800/acre).

NRCS staff considered residual values associated with landowners' reserved hunting and fishing rights too speculative to recognize in easement appraisals because there was no guarantee that WRP lands would forever remain suitable for hunting purposes. Federal Appraisal Standards define speculative and conjectural values as those depending on events that, "while within the realm of possibility, are not fairly shown to be reasonably probable."³¹ Prices negotiated between buyers and sellers of WRP easement land are not speculative because they are based on what both parties perceive to be the reasonably probable future uses of the land, not absolute assurances. Reasonably knowledgeable buyers are familiar with WRP easement-encumbered lands; they know the purpose of the program is to restore and protect wetland habitats. They also know that WRP easement deeds specifically reserve to landowners the right to lease hunting and fishing rights for economic gain. Even NRCS State offices recognize and promote the marketability of WRP easement-encumbered lands and the reasonable probability of future income, as evidenced by the following excerpts:

- *Farmers are recognizing that income derived from hunting, fishing, and other recreational uses can rival, or in many cases, exceed income from the more traditional agricultural uses. (Oklahoma NRCS website)*
- *Many landowners are interested in the program for financial reasons; not only for the sale of the easement, but also for future income potential related to the sale of hunting privileges. (California NRCS website)*

³¹ An example of a speculative and conjectural assumption would be a value based on commercial development when the land's zoning permitted only agricultural use and a zoning change was not reasonably probable in the near future.

- *The WRP is providing agricultural producers a way of turning their poorest cropland and pasture into valuable wildlife habitat...game management can generate the highest income from leased hunting rights. (North Carolina NRCS website)*

Appraisal Savings Outweighed By Overstated Easement Costs

According to program officials, NRCS' current easement valuation procedures were predicated, in part, on the agency's desire to avoid the time and expense of appraising each WRP easement. NHQ staff believed that a significant number of WRP easement valuations did not involve the completion of appraisals, but were based solely on geographic area rates developed by State conservationists. They believed that requiring the completion of two appraisals estimating "before and after" land values for each individual WRP easement transaction would increase program delivery costs from several hundred to several thousand dollars per transaction. However, we believe that the agency's reliance on a single appraisal resulted in only modest program savings that were far outweighed by the costs associated with excess landowner payments.

Contrary to NHQ staff's belief, nearly all WRP easement transactions involve the completion of an appraisal, which is used to establish the upper limit of the agency's easement compensation. The only exception is when landowners offer to accept compensation that is "beyond any reasonable doubt" less than the full authorized value of the land.³² Staff interviewed at the 13 NRCS State offices, representing 72 percent of WRP easement acquisition funding for fiscal years 1999–2003, stated that they order appraisals for every WRP easement transaction. After the appraisals are completed, landowners are offered the lesser of the appraised value, the State's geographic area rate (when applicable), or the landowner's offer.

We found that increased costs associated with estimating each parcel's residual value were negligible, especially when compared to the overstated values likely to arise from NRCS' current appraisal process. According to NRCS contract appraisers we interviewed, modifying the agency's easement appraisal process to include residual value estimates would increase costs by about 50 percent. Using current appraisal costs provided by NRCS staff and contract appraisers, we estimated NRCS would have spent an additional \$1 million during fiscal years 1999–2003 to obtain appraisals quantifying residual values. This amount represented about one-tenth of 1 percent of the \$724,388,936 the 13 States spent acquiring WRP easements during that same period.

³² WRP Manual 514.28 (g)

Payments Based on Geographic Area Rates Did Not Ensure Compliance With Statute's Payment Limitations

When apprised of our conclusions, NHQ staff expressed the opinion that the agency's failure to recognize residual values during the WRP easement appraisal process did not necessarily equate to significant excess payments to landowners. They maintained that the majority of landowner offers are based on geographic area rates that limit the amount of landowner compensation to something less than the easement's agricultural FMV, and that these "discounted values" eliminate any excess payments arising from ignored residual values.³³ We believe that the agency's position did not take into account several important factors.

- First, State offices are not required to use geographic area rates. State conservationists have the discretion to create, modify, or discontinue the use of these rates at any time. Two of the 13 States we reviewed did not use area rates. Also, geographic area rates are not designed to be less than or equal to a parcel's agricultural FMV. As explained by NRCS staff, the appraisal determines a particular parcel's FMV. Geographic rates, developed by NRCS staff with no appraisal expertise, simply represent per acre values above which NRCS is not willing to pay, and they are primarily used to limit the amount of prime farmland enrolled in the program. All 13 of the NRCS State offices we contacted used appraisals to establish the upper limit of NRCS easement compensation, offering landowners the lesser of the appraised value or the applicable geographic area rate.
- Second, a significant majority of easement payments, about 75 percent of those in the 13 States we visited, are based on contracted appraisal values that fall below the established geographic area rates. This large percentage demonstrates the agency's reliance on the appraisal process to establish landowner compensation and the need to recognize residual values.
- Third, landowner compensation based on geographic area rates can also be overstated when residual values are ignored. For example, suppose a parcel has a fee simple agricultural FMV of \$1,000/acre, but the landowner is paid only \$800/acre based on the geographic area rate established by that particular State. If the property has a residual value greater than \$200/acre, the landowner has been overpaid. In this case, if the land has a residual value of \$400/acre, the correct landowner compensation would be \$600/acre (\$1,000

³³ NRCS regulations specify that WRP easement compensation is to be the lesser of the geographic area rate, the value based on a market appraisal, or the landowner offer.

“before” value less \$400 “after” value = \$600/acre). If NRCS paid the landowner \$800/acre based on the State’s geographic area rate, the landowner would be overcompensated by \$200/acre.

The only time landowner payments based on geographic area rates would not overstate WRP easement compensation is when the difference between the land’s FMV and the geographic area rate is greater than the residual value of WRP easement-encumbered land. Consequently, the potential savings shown in exhibit D may actually understate the problem, as our calculations incorporated only those WRP easement payments thought to be based solely on appraised values; WRP easement payments based on geographic area rates were not included.

Current WRP Easement Valuation Methodology Does Not Comply with Federal Real Property Acquisition Requirements

The easement valuation weaknesses discussed above will be addressed if NRCS complies with the real property acquisition requirements specified in 49 CFR part 24. Recent revisions to the regulation, effective February 3, 2005, expanded the applicability of the CFR’s appraisal provisions to all acquisitions of real property for direct Federal programs or projects, including voluntary acquisitions of permanent and temporary easements such as those acquired by WRP. Several of the CFR’s real property appraisal requirements would impact the WRP easement valuation procedures currently used by NRCS and discussed in the finding above.

- 49 CFR 24.103(a) requires that appraisals reflect established and commonly accepted appraisal practice and include an analysis of the property’s highest and best use. NRCS’ use of fee simple “agricultural only” values to estimate WRP easement compensation is contrary to such direction because (1) use of fee simple “agricultural values” does not reflect established appraisal practice, which estimates easement compensation as the fair market value of the entire property before the easement, less the fair market value of the entire property after the easement, and (2) agency-mandated use of “agricultural only” values precludes an analysis of the property’s highest and best use.
- 49 CFR 24.103 also requires a statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits to the remaining real property (residual value). NRCS’ present policy of presuming lands subject to WRP easements have zero remaining value is contrary to the CFR requirement.

- 49 CFR 24.102(c) requires appraisals for every real property acquisition exceeding \$10,000.³⁴ This CFR requirement is inconsistent with the provisions found in WRP Manual 514.28, which allow appraisals to be waived if partners offer to pay a portion of the easement cost or when landowners are willing to accept compensation that is “beyond any reasonable doubt” less than the full authorized value of the land.
- 49 CFR 24.102(d) requires agencies to establish just compensation for real property that “cannot be less than the approved appraisal of the market value of the property, taking into account the value of allowable damages or benefits to any remaining property.” Thus, NRCS’ geographic area rates and fee simple “agricultural only” values would no longer serve as the basis for landowner compensation because they have been developed, ostensibly, to quantify landowner compensation as something less than the WRP easement’s FMV.

Because the CFR provisions listed above became effective after the completion of our fieldwork, we did not include them as criteria in our analysis of the WRP easement valuation procedures discussed above. We have, however, referenced applicable CFR real property acquisition requirements to supplement and support our recommendations to NRCS.

In conclusion, the presumptions underlying the agency’s current WRP easement valuation process are suspect, resulting in landowner compensation that does not comply with either the program’s authorizing statute or the recently amended CFR. On one hand, NRCS’ practice of disregarding residual values of WRP easement-encumbered lands produces values that exceed the easements’ FMV and, thus, the payment limits specified in the statute. On the other hand, NRCS staff continue to maintain that their use of geographic area rates and fee simple “agricultural only” values produce landowner payments that are less than the easements’ FMV, a circumstance contrary to the real property appraisal requirements of 49 CFR part 24.

We believe that any all-inclusive valuation assumptions—such as NRCS’ belief that use of “agricultural only” market values always meet the statute’s payment cap, or that lands subject to WRP easements always lack residual values—should not serve as the basis of a Federal agency’s valuation methodology. Federal law specifies that WRP easement compensation must be just to both the landowner whose property is encumbered and the public that pays for it. Appropriate easement compensation is best determined by an appraiser on a case-by-case basis, reflecting the unique characteristics of both the land being appraised and the market conditions in the area.

³⁴ 49 CFR part 24, subpart B, section 24.102c. The Federal agency funding the project may approve exceeding the \$10,000 threshold, up to a maximum of \$25,000, if the agency acquiring the real property offers the property owner the option of having the agency appraise the property.

Recommendation 11, to the NRCS Chief

Modify WRP easement valuation procedures in WRP Manual 514.28 to adopt the real property acquisition requirements of 49 CFR part 24.102(c) requiring appraisals of all real property interests to be acquired, except properties where acquisition costs are estimated to be \$10,000 or less.

Agency Response.

Part 514.28 of the WRP Manual, “Determining Easement Values,” will be modified to reflect Federal appraisal practices including, to the extent appropriate, compliance with UASFLA and conditions applicable to waivers of appraisals up to \$10,000 in acquisition costs. Estimated completion date is September 30, 2005.

OIG Position.

OIG accepts NRCS’ management decision for this recommendation.

Recommendation 12, to the NRCS Chief

Modify WRP Manual 514.29 to discontinue use of geographic area rates that are intended to limit WRP easement compensation to less than fair market value (i.e., appraised value).

Agency Response.

Part 514.29, of the WRP Manual, “Making the Offer to the Landowner,” will be modified to meet the real property appraisal requirements in 49 CFR Part 24. Estimated completion date is September 30, 2005.

OIG Position.

OIG accepts NRCS’ management decision for this recommendation.

Recommendation 13, to the NRCS Chief

Working with Federal appraisal experts, modify WRP easement valuation procedures to require, among other things, that easement appraisals follow established and commonly accepted Federal appraisal practices, standards, and techniques. The appraisal instructions should, at a minimum, (1) specify that the purpose of the appraisal is to estimate the effect of a partial acquisition (WRP easement), and (2) instruct appraisers to estimate WRP

easement compensation as the difference between the fair market value of the entire property before the easement and the fair market value of the entire property after the easement.

Agency Response.

While NRCS does not agree with some of the elements of the OIG methodology, particularly the statistical sampling and conclusions drawn from it, we accept for purposes of this audit that our valuation methods have not adequately considered residual values in some cases, resulting in payments made to landowners which exceed the statutory cap at 16 USC 3837 a (f). Accordingly, NRCS will hereafter employ commonly accepted Federal appraisal practices, standards, and techniques. We will also specify that the purpose of the appraisal is to estimate the effect of a partial acquisition and instruct the appraiser to estimate the compensation as the difference between the before and after value. Estimated completion date is September 30, 2005.

OIG Position.

OIG accepts NRCS' management decision for this recommendation.

Section 3 Crop Base

Crop base acres (or the number of acres of a particular crop on a farm as established by the election of the landowner) are used to calculate farm subsidy payments disbursed by FSA. Due to a lack of clear guidance, NRCS staff in 10 of the 13 States we reviewed did not ensure the proper disposition of crop base on lands enrolled in WRP. As a result, program delivery costs were higher than necessary and landowners received ineligible FSA payments totaling approximately \$900,743.

Finding 3

Federally Purchased Crop Base Was Not Retired

NRCS staff in 10 of the 13 States we audited allowed WRP easement appraisals to include the value of crop base without ensuring that landowners permanently retired that base with FSA. Although NRCS had issued guidance specifying that NRCS State offices should avoid the purchase of crop base if possible, agency officials did not clearly incorporate specific instructions into the WRP Manual. In addition, NRCS had not issued any instructions requiring landowners to retire federally purchased crop base with FSA. As a result, NRCS not only unnecessarily compensated landowners for crop base, increasing program delivery costs, it allowed those same landowners to continue receiving about \$838,448 in Federal program assistance for crop base that had been purchased by the Federal Government.

NRCS Guidance Letter WRP 96-2, issued in November 1995, provides direction on the valuation of crop base on land proposed for WRP easements. The guidance advises agency staff that land with a crop base may have a considerably higher appraised value than land without a base. To avoid the higher costs associated with purchasing and retiring crop base, the guidance specifies that, prior to the appraisal, the WRP applicant should move any crop base off proposed WRP land to non-easement areas on the same farm, if available.³⁵ According to the guidance, crop base can be included in WRP easement appraisals only if there is no remaining land on the farm adaptable for use of the base, or if the landowner specifically elects to include the base in the appraisal value and to retire it after receiving compensation.

Although the WRP 96-2 guidance instructed that crop base be removed from proposed WRP easement lands before the appraisal whenever possible, NRCS had not adequately communicated that direction to State office staff. We found that the WRP Manual contained only one reference to the removal

³⁵ Landowners move crop base to other areas on a farm by completing FSA Form CCC-517, "Tract Redistribution Form."

of crop base prior to the WRP appraisal, and that appeared in an exhibit of sample appraisal instructions.

We also found that neither the WRP guidance nor the manual provided direction concerning the proper retirement of crop base in cases where crop base values were included in WRP easement appraisals. Specifically, the manual did not instruct WRP staff to require landowners to complete and sign FSA Form CCC-505,³⁶ which certifies the landowners' agreement to voluntarily retire federally purchased crop base acres. FSA must receive the form in order to retire the crop base from the farm program and ensure it is no longer eligible for FSA subsidies. If it does not receive this form, FSA administratively reassigns crop base acres located on the WRP easement area to other adaptable tracts on the same farm when notified that a WRP easement has been recorded.

In the three State offices we visited (California, Minnesota, and Iowa), NRCS staff did not decide, prior to the appraisal, how the crop base would be treated. Instead, NRCS staff permitted crop base values to be included in 32 of the 37 WRP easement appraisals we reviewed, even though, in 7 of those cases, the landowner could have transferred the base to other land prior to the appraisal.

In all seven cases, NRCS had finalized the WRP transaction and recorded the easement. FSA, notified of the easements but lacking the forms necessary to retire the crop base, reassigned the crop base to other areas on each of the farms, allowing the landowners to continue receiving Federal benefits totaling approximately \$838,448³⁷ for crop base that had been purchased by NRCS.³⁸ (See exhibit G, footnote (1).)

All of the questioned payments occurred in California, where 7 of the 17 reviewed appraisals (41 percent) involved federally purchased crop base for which the landowners subsequently received FSA benefits. Not only did the NRCS California State Office not require landowners to agree to retire federally purchased base acres, we noted several instances in which staff advised landowners to move crop base to other areas on their farms in order to retain farm subsidy benefits. Inappropriate treatment of crop base in California is particularly problematic because that State receives over 8 percent of total WRP acquisition funding annually. In addition, many farms in California have rice base, one of the most lucrative types of crop base in terms of FSA subsidy payments. If the error rate we identified in our sample is any indication, approximately 74 of California's 179 WRP

³⁶ Form CCC-505, "Voluntary Permanent Direct and Counter-Cyclical Program Base Acreage Reduction"

³⁷ Estimate based on FSA payments received in FYs 2001-2003.

³⁸ Although FSA procedures specify that lands subject to a WRP easement cannot receive Federal farm subsidy payments, they permit landowners to redistribute base acres to non-easement areas on a farm if other adaptable lands are available.

easement contracts may involve landowners who are continuing to receive FSA subsidy payments for crop base purchased by the Federal Government.

To determine the extent of the crop base problem, we contacted 10 additional NRCS State offices. We determined that seven of these State offices were also not complying with the agency's crop base direction, but were allowing crop base to be included in WRP appraised values and then retained by landowners. In total, these 10 noncompliant State offices (3 originally visited and 7 subsequently contacted) received approximately 51 percent of the agency's WRP acquisition funding for fiscal years 1999-2003. (See exhibit C.)

NRCS staff gave various reasons for not requiring landowners to retire federally purchased crop base. Some were unaware of the agency's crop base direction and considered the retirement process to be purely an FSA matter. Others were familiar with the agency's crop base policy but lacked sufficient appraisal knowledge to realize crop base acres had been included in the WRP easement values. Still others assumed federally purchased base acres were retired when landowners moved the base off the WRP land to other areas on a farm.

As a result of inadequate agency direction and poorly informed staff, NRCS not only overstated WRP easement acquisition costs, it created an inequity among individuals enrolling land in WRP. That is, some program participants were compensated for crop base that was subsequently retired, while other participants, those with additional adaptable land on their farms, were compensated for crop base they were allowed to retain.

OIG issued a management alert to NRCS on March 29, 2004, discussing the improper treatment and disposition of crop base on WRP lands. NRCS officials generally concurred with the conditions noted in the management alert, but they did not elaborate on how they intended to implement the recommended corrective actions.

Recommendation 14, to the NRCS Chief

Clearly incorporate the WRP 96-2 crop base direction in the body of the WRP Manual and notify all field staff of these requirements.

Agency Response.

NRCS will clarify guidance in the WRP Manual and will work with FSA to develop appropriate procedures for landowners who decide to retire crop bases, as applicable. Estimated completion date is September 30, 2005.

OIG Position.

OIG accepts NRCS' management decision for this recommendation.

Recommendation 15, to the NRCS Chief

Establish written direction requiring that landowners applying for participation in WRP be notified that crop base acres included in the WRP easement appraisals must be retired, and requiring landowners to complete and sign FSA Form CCC-505, specifying the type and amount of base slated for such treatment.

Agency Response.

NRCS agrees to issue guidance that requires written notification of landowners regarding the treatment of crop bases in the appraisal process. Estimated completion date is September 30, 2005.

OIG Position.

OIG accepts NRCS' management decision for this recommendation.

Recommendation 16, to the NRCS Chief

Instruct contract appraisers to document the type and amount of crop base included in WRP easement appraisals and direct NRCS staff to reconcile that information to the crop base data cited in FSA Form CCC-505 to ensure the base included in the value is the base retired.

Agency Response.

NRCS agrees to issue guidance clarifying the treatment of crop bases and adopting safeguards to maximize the probability that FSA retires crop bases

when ordering appraisals and during technical reviews. Estimated completion date is September 30, 2005.

OIG Position.

OIG accepts NRCS' management decision for this recommendation.

Recommendation 17, to the NRCS Chief

Establish procedures directing NRCS staff to provide FSA with copies of completed and signed FSA CCC-505 forms at the time of easement recording to ensure that federally purchased crop base is appropriately retired.

Agency Response.

NRCS agrees to issue guidance to clarify policy related to crop bases and to work with FSA to develop procedures that are mutually agreeable to both agencies. Estimated completion date is September 30, 2005.

OIG Position.

OIG accepts NRCS' management decision for this recommendation.

Recommendation 18, to the NRCS Chief

Through review of appraisal reports and discussions with contract appraisers, identify instances where crop base values have been included in pending WRP easement valuations, and work with FSA staff to ensure that the base is appropriately retired from the farm program.

Agency Response.

Through review of appraisal reports and discussions with contract appraisers, NRCS will identify instances where crop base values have been included in pending WRP easement valuations. NRCS will work with FSA staff to ensure that the base is appropriately retired from the farm program. Estimated completion date is September 30, 2005.

OIG Position.

OIG accepts NRCS' management decision for this recommendation.

Finding 4

NRCS Did Not Properly Report WRP Easements to FSA

NRCS did not have sufficient controls to ensure that FSA county offices were aware of recorded WRP easements. Although the WRP Manual directed NRCS staff to notify FSA after individual WRP easements were recorded, it did not provide for a confirmation process to ensure all WRP easement information had been properly conveyed to FSA. We found that 3 of the 17 easements we reviewed in California still had crop base acres—which had not been transferred to other lands on the farm or retired—assigned to WRP easement lands. Thus, producers continued to receive farm program payments totaling \$258,411 for lands subject to WRP conservation easements.

Federal law³⁹ requires landowners to agree to the permanent retirement of any existing cropland base for WRP easement areas under any program administered by the Secretary of Agriculture, as determined by FSA. The FSA Manual⁴⁰ states that lands subject to WRP easements are no longer eligible for Federal farm subsidy payments.

The WRP Manual⁴¹ requires NRCS staff to advise FSA county offices of the date that the WRP easement was recorded and to provide a graphic representation or aerial photo detailing the easement location and acreage. FSA uses this information to reclassify areas under WRP easements as non-cropland and to reduce the applicable farm's cropland by the amount of the easement's acreage.

We interviewed NRCS and FSA district and county office staff in California, Minnesota, and Iowa to determine if procedures existed to ensure proper coordination between the two agencies. NRCS State office staff were responsible for informing local NRCS district office staff of recorded WRP easements. The local NRCS staff were, in turn, responsible for informing FSA county staff of those easements and for providing aerial photos with descriptions of the easement area and acreage.

In the three California cases where producers continued to receive farm subsidy payments for crop base located on WRP easement areas, the NRCS State office had communicated the recorded WRP easement information to the NRCS district offices; however, the district offices had not conveyed this information to their FSA counterparts. In one district office, the district conservationist who had processed the WRP easement was no longer in the

³⁹16 U.S.C. 3837b, dated January 2, 2001

⁴⁰ 1-DCP, par. 426 E

⁴¹ Subpart E, section 514.34(d)

position and the current district conservationist was unaware of the easement. In the two other district offices, the district conservationists did not communicate sufficient WRP easement information to FSA staff. FSA staff became aware of the three WRP easements only after OIG notified them during the course of the audit, and they are now taking measures to retire the crop base associated with the WRP easement lands.

We interviewed the FSA county executive director at each of the three county offices and the FSA California State Office specialist on payment limitations to determine if FSA had controls to ensure crop base acres did not remain on WRP easement lands. We found that FSA relies on NRCS and producers⁴² to notify it of WRP easements.

Under the 2002 Farm Bill, most producers wishing to receive farm subsidies through FSA's Direct and Counter-Cyclical program (DCP) are required each year to (1) certify⁴³ to FSA the type and amount of crops they intend to plant on their cropland, and (2) sign a DCP contract. The annual DCP contract specifies for each farm, by crop, the crop base acres and the base acre payment yield. In two of the three California cases cited above, we found that the landowner or the producer had certified the WRP lands as fallow and signed a DCP contract reporting no change in their respective crop base acres, even though WRP easements encumbered portions of the two farms. In the absence of WRP easement notification from NRCS, FSA relied on the DCP contract information and issued crop base payments in the amount of \$258,411 for WRP easement-encumbered lands, which were ineligible to participate in the farm subsidy program. Both of these cases have been referred to and declined by OIG Investigations.

In two of the three cases, NRCS included the value of the crop base in the WRP easement appraisal, even though the landowners had other cropland available for use of the base. These transactions also came under the scope of our Finding 3, and we included the related FSA farm subsidy payments of \$196,116 in that finding. For the other case, the landowner had no other cropland available for use of the base and would not have received \$62,295 in FSA subsidy payments if that agency had been properly notified of the recorded WRP easement. (See exhibits A-2 and G.)

NRCS currently relies on its district office staff to communicate WRP easement information to the FSA county offices. Communication of WRP easement information to FSA could be improved with the addition of follow-up procedures like those developed by the NRCS Iowa State Office. The Iowa State Office provides an annual listing of all recorded WRP easements,

⁴² A producer is an individual, entity, or joint operation that is associated with a farm and farms the land. Producers are eligible to receive crop base payments based on their crop share ratio with the landowner. The producer and landowner can be one and the same.

⁴³ Landowners (or producers) complete FSA Form 578, "Report of Acreage," to inform FSA of the types and amounts (acreage) of crops to be planted for production.

sorted by county, to the FSA State office. The FSA State office then disseminates this information to its county offices. The NRCS Iowa State Office developed this procedure after FSA county offices complained that landowners were inappropriately receiving both WRP and Conservation Reserve Program (CRP)⁴⁴ payments, a circumstance prohibited by Federal regulations.⁴⁵ When provided with a complete listing of all WRP easements, the FSA county offices were able to accurately reduce cropland acres and identify any landowners receiving both WRP and CRP payments. Neither the NRCS California nor Minnesota State Office had such a system in place.

Recommendation 19, to the NRCS Chief

Modify the WRP Manual instructions to require NRCS State office staff to provide, at least annually, a listing of all recorded WRP easements, sorted by county, to FSA State offices and NRCS district offices.

Agency Response.

The WRP Manual will be modified, requiring NRCS State office staff to provide, at least annually, a listing of all recorded WRP easements, sorted by county, to FSA State offices and NRCS district offices. Estimated completion date is September 30, 2005.

OIG Position.

OIG accepts NRCS management decision for this recommendation.

Recommendation 20, to the NRCS Chief

Direct each NRCS State office to provide a listing of all previously recorded WRP easements, sorted by county, to the corresponding FSA State office so that FSA can ensure there are no landowners receiving crop base payments on lands subject to WRP easements.

Agency Response.

The WRP Manual will be modified to require NRCS State offices to provide a listing of all recorded WRP easements, sorted by county, to FSA State Offices and NRCS district offices so that FSA can ensure that there are no landowners receiving crop base payments on lands subject to WRP easements. Estimated completion date is September 30, 2005.

⁴⁴ The Conservation Reserve Program is administered by FSA.

⁴⁵ 7 CFR 1467.4f

OIG Position.

OIG accepts NRCS' management decision for this recommendation.

Recommendation 21, to the FSA Administrator

Coordinate with the NRCS California State Office staff and ensure crop base acres on the WRP easement-encumbered lands identified during the audit are properly reassigned or retired from participation in FSA farm subsidy programs, and recover ineligible farm subsidy payments in the approximate amount of \$62,295 to the extent practicable.

Agency Response.

The producers have been informed of the base reductions and resulting overpayments and have appealed the determinations to the county committee.

OIG Position.

In order to reach management decision, FSA needs to provide OIG with the final determinations made by the county committee.

Recommendation 22, to the FSA Administrator

Determine whether the California producers that did not report crop base reductions engaged in misrepresentation or a scheme or device for the purpose of defrauding FSA farm programs. If so, determine, according to applicable program provisions, the consequences of such violations and take appropriate action.

Agency Response.

The California State Committee is scheduled to review the case on July 6, 2005, to determine if misrepresentation provisions apply.

OIG Position.

In order to reach management decision, FSA needs to provide OIG with the California State Committee determination.

General Comments

Although Federal entities such as the FS and DOI conduct land management programs similar to the WRP in scope and funding, their appraisal direction and organizational structures are markedly different from that of NRCS. A brief overview of the appraisal controls in place in such organizations emphasizes the singular nature of NRCS' WRP easement valuation policies and procedures.

Forest Service

The FS employs approximately 47 appraisers nationwide. In fiscal year 2003, the agency purchased lands valued at \$118 million. A chief appraiser, who acts as the agency's real property valuation expert, makes policy recommendations regarding appraisal procedures and standards, and provides training to appraisal staff, who implement and maintain those procedures and standards. In addition, the chief appraiser conducts periodic compliance inspections of regional offices to ensure appraisal policies and procedures are functioning as designed, and that staff and contract appraisers are performing at the required level of competence.

All appraisals prepared for FS use must comply with UASFLA and the provisions of 49 CFR part 24, both of which require the recognition of residual land values when estimating easement compensation, as well as reviews and approvals of all completed appraisals by qualified review appraisers. FS staff appraiser qualifications include State and professional certifications, completion of recognized appraisal courses, and in-service training. FS review appraisers must meet even higher standards, including a demonstrated ability to objectively and professionally critique the work of staff and fee appraisers.

Department of the Interior, Appraisal Services Directorate

DOI has appraiser staffing and qualification requirements similar to those of the FS. In 2003, DOI strengthened its appraisal controls by creating an Appraisal Services Directorate that consolidated the appraisal functions of four of its land management agencies⁴⁶ and eliminated conflicts of interest between the Department's realty and appraisal priorities. The Appraisal Services Directorate employs a chief appraiser and approximately 75 staff appraisers nationwide; it has reviewed and approved 605 appraisals totaling \$382 million in the first 4 months of its existence.

⁴⁶ Fish and Wildlife Service, and the Bureaus of Land Management, Reclamation, and Indian Affairs

Farm Service Agency

FSA, the agency responsible for administering WRP prior to NRCS, employs approximately 70 to 80 appraisers nationwide. The agency's WRP easement appraisal process included direction to comply with UASFLA, 49 CFR part 24, and USPAP.

Natural Resources Conservation Service

NRCS has spent more than \$1 billion since 1995 acquiring WRP easements, and has processed more than 7,000 appraisal reports, yet it employs no chief appraiser to guide the agency's valuation policies and no qualified appraisal staff to review and approve WRP easement appraisals.

Scope and Methodology

Our audit was a nationwide review of the NRCS WRP easement valuation process to determine if easement compensation paid to landowners met statutory requirements. As part of our review, we evaluated the pertinent laws and regulations governing WRP and the current policies, procedures, and instructions NRCS had established as guidance for determining the amount of compensation paid for WRP easements. We also evaluated the agency's controls over easement appraisal contracting and review, which are critically important in ensuring the integrity of easement acquisition expenditures.

We performed fieldwork at the NRCS National Headquarters in Washington, D.C., and three NRCS State offices (California, Minnesota, and Iowa). In addition, in order to determine if valuation errors identified during our review of the original three States were indicative of problems nationwide, we expanded the scope of our audit to cover 10 additional State offices⁴⁷ receiving large amounts of WRP acquisition funding. The 13 sampled States received approximately 72 percent of all WRP easement acquisition funds for fiscal years 1999–2003.

We conducted interviews with NRCS staff at the NHQ, 13 State offices, and 21 district offices. We also interviewed the Deputy Assistant General Counsel for OGC; 18 NRCS contract appraisers performing work in the 13 States; appraisal staff in 3 county assessors' offices; representatives from the Office of the Chief Counsel, Federal Highway Administration; valuation experts at the FS, DOI, and the Iowa Department of Natural Resources; and other individuals, as appropriate, to obtain information related to appraisal standards and the valuation of conservation easements. In addition, we interviewed FSA staff at the National, State, and county office levels to determine their treatment of crop base on lands subject to WRP easements.

We obtained additional information from Internet sites maintained by NRCS and at least seven other Federal agencies, the Appraisal Foundation, the Appraisal Institute, real estate companies in eight States, and other organizations as applicable.

At the three NRCS State offices visited, we judgmentally selected 37 easement transactions processed during fiscal years 1999–2003. For this selection, we favored easements with higher appraised values located in geographically diverse counties with significant WRP activity. For each selected transaction, we analyzed the easement case files, contracted

⁴⁷ Arkansas, Florida, Illinois, Indiana, Louisiana, Michigan, Mississippi, Missouri, Washington, and Wisconsin

appraisal reports, closing documents, crop base information, and other pertinent documentation relating to the easement valuation. We conducted fieldwork from June 12, 2003, through April 1, 2004.

To support and supplement the testimonial evidence provided by the 18 NRCS contract appraisers, we contacted Federal, State, and county appraisers and obtained documentation of 114 WRP easement sales and appraisal estimates for lands in California, Illinois, Indiana, Iowa, Minnesota, Missouri, Washington, and Wisconsin. For 14 of these transactions, we were able to trace the provided documentation back to a specific WRP easement deed and compare each parcel's "after" value to the compensation originally paid by NRCS. Although, in some instances, several years had passed between the recording of the easement and the encumbered land's subsequent sale, the analysis provided insight into the relationship between "before and after" values of WRP easement-encumbered lands.

This audit was performed in accordance with generally accepted Government auditing standards.

Exhibit A-1 – Summary of Monetary Results, NRCS

FINDING NUMBER	RECOMMENDATION NUMBER	DESCRIPTION	AMOUNT	CATEGORY
2	13	NRCS overcompensated landowners by not considering the residual value of WRP easement-encumbered lands.	\$159,000,000 ¹	FTBPTBU – Management Improvement
TOTAL MONETARY RESULTS			\$159,000,000	

Footnote:

⁽¹⁾ The amount listed above reflects the minimum projected potential savings. Using “before and after” land value estimates provided by NRCS contract appraisers, we estimated that NRCS potential savings in the 13 reviewed States ranged from \$159 million to \$243 million over the last 5 fiscal years. These projected potential savings may actually understate the problem, as our calculations incorporated only those WRP easement payments thought to be based solely on appraised values; WRP easement payments limited by geographic area rates were not included in our calculations.

Exhibit A-2 – Summary of Monetary Results, FSA

FINDING NUMBER	RECOMMENDATION NUMBER	DESCRIPTION	AMOUNT	CATEGORY
3	14	In seven closed WRP easement transactions, NRCS allowed contract appraisers to include crop base in estimated easement values without ensuring those crop bases were retired from participation in Federal farm subsidy programs.	\$838,448	FTBPTBU – Management Improvement
4	21	NRCS did not notify FSA about recorded WRP easements, allowing landowners to continue receiving Federal farm subsidy payments for ineligible easement-encumbered lands.	\$62,295	Questioned Cost, Recovery Recommended
TOTAL MONETARY RESULTS			\$900,743	

Exhibit B – Sites Visited and Contacted

ORGANIZATION/ENTITY	LOCATION
Office of the General Counsel, USDA	Washington, D.C.
Office of the Chief Counsel, Federal Highway Administration	Washington, D.C.
U.S. Forest Service	Washington, D.C.
U.S. Department of the Interior, Appraisal Services Directorate	Washington, D.C.
<u>Natural Resources Conservation Service</u> National Headquarters State Offices (Visited) State Offices (Contacted) District Offices	Washington, D.C. California, Minnesota, and Iowa Arkansas, Illinois, Indiana, Florida, Louisiana, Michigan, Missouri, Mississippi, Washington, and Wisconsin Multiple district offices in California, Minnesota, and Iowa
NRCS Contract Appraisers	Arkansas, California, Illinois, Indiana, Iowa, Florida, Louisiana, Michigan, Minnesota, Missouri, Mississippi, Washington, and Wisconsin
<u>Farm Service Agency</u> National Headquarters State Offices FSA County Offices	Washington, D.C. California, Minnesota, and Iowa Multiple county offices in California, Minnesota, and Iowa
U.S. Fish and Wildlife Service	Region 1 and Region 3
Iowa Department of Natural Resources	Des Moines, Iowa
County Assessor's Offices	Colusa and Sutter Counties, California

Exhibit C – Valuation Control Weaknesses

	California	Iowa	Minnesota	Arkansas	Florida	Illinois	Indiana	Louisiana	Michigan	Mississippi	Missouri	Washington	Wisconsin	Totals
Control Weaknesses Identified Through State Office Interviews														
WRP Easement Appraisals Did Not Reflect "Agricultural Only" Values as Defined by NRCS	X	X	X	X	X	X	X	X	X	X	X	X	X	100% (13/13)
Crop Base Improperly Included in the Appraised Values	X	X	X	X		X	X		X		X	X	X	77% (10/13)
State Office Appraisal Instructions Differed from the Appraisal Instructions in WRP Manual	X	X												15% (2/13)
Control Weaknesses Identified Through OIG File Review ⁽¹⁾														
Development, Recreation, Mineral, or Water Rights Improperly Included in the Appraised Values	X	X	X											100% (3/3)
Did Not Conduct Technical Reviews on 10 Percent of Appraisals on Annual Basis Before Landowner Payment	X	X	X											100% (3/3)
Inaccurate/Questionable Value Determination Due to Acreage Modification	X		X											67% (2/3)
Mathematical Errors and Misstatements			X											33% (1/3)

Footnote:

⁽¹⁾ These weaknesses were identified during our file reviews of selected easement transactions in the three States we visited. We did not conduct file reviews at the additional 10 NRCS State offices contacted.

Exhibit D – Estimated WRP Easement Potential Savings

A	B	C	D	E	F	G	H	I
States	Total WRP Easement Acquisition Funding, FYs 1999 – 2003	Approximate Percentage of Landowner Offers Equal to Appraised Values ¹	Approximate Amount of WRP Payments Based Solely On Appraised Values, FYs 1999-2003 (B x C)	Average Appraised Values Paid by NRCS (Generally the FMV of Land Before WRP Easement) ²	Average Residual Values (FMV of Land After WRP Easement) ³	Residual Values as Percentage of NRCS Easement Compensation (F/E)	WRP Easement Compensation Directed by Statute (FMV of Land Before Easement Less FMV of Land After Easement) (D - DxG)	Potential Savings if NRCS' Changes Current Easement Valuation Policies to Comply with the WRP Statute FYs 1999-2003 (D x G)
Arkansas	\$81,639,388	50%	\$41,000,000	\$600-\$1,496/Acre	\$583 - \$2,000/acre	40% - 100+% ⁴	\$0 - \$25,000,000	\$16,000,000 - \$41,000,000 ⁵
California	\$83,126,850	63%	\$52,000,000	\$2000/acre	\$1,200 - \$1,500/acre	60% - 75%	\$13,000,000 - \$21,000,000	\$31,000,000 - \$39,000,000
Illinois	\$43,280,295	85%	\$37,000,000	\$1,200 - \$1,800/acre	\$300 - \$400/acre	17% - 33%	\$25,000,000 - \$31,000,000	\$6,000,000 - \$12,000,000
Indiana	\$40,533,823	90%	\$36,000,000	\$1,600/acre	\$200 - \$250/acre	12% - 16%	\$30,000,000 - \$32,000,000	\$4,000,000 - \$6,000,000
Iowa	\$60,232,473	100%	\$60,000,000	\$2,390/acre	\$400 - \$530/acre	17% - 22%	\$47,000,000 - \$50,000,000	\$10,000,000 - \$13,000,000
Florida	\$80,727,902	90%	\$73,000,000	\$600 - \$3,500/acre	\$0/acre	0%	\$73,000,000	\$0
Louisiana	\$70,829,900	50%	\$35,000,000	\$800/acre	\$500 - \$550/acre	62% - 69%	\$11,000,000 - \$13,000,000	\$22,000,000 - \$24,000,000
Michigan	\$33,941,650	90%	\$31,000,000	\$2,000/acre	\$2,000 - \$2,500/acre	100+%	\$0	\$31,000,000 ⁵
Minnesota	\$51,233,535	100%	\$51,000,000	\$1,800/acre	\$200 - \$1,000/acre	11% - 55%	\$23,000,000 - \$45,000,000	\$6,000,000 - \$28,000,000
Mississippi	\$59,365,000	10%	\$6,000,000	\$700 - \$1,000/acre	\$900 - \$1,500/acre	90% - 100+% ⁴	\$0 - \$500,000	\$5,000,000 - \$6,000,000 ⁵
Missouri	\$47,028,910	50%	\$24,000,000	\$1,800/acre	\$250 - \$500/acre	14% - 28%	\$17,000,000 - \$21,000,000	\$3,000,000 - \$7,000,000
Washington	\$36,443,070	90%	\$33,000,000	\$2,200 - \$2,300/acre	\$450 - \$1,000/acre	20% - 45%	\$18,000,000 - \$26,000,000	\$7,000,000 - \$15,000,000
Wisconsin	\$36,006,140	90%	\$32,000,000	\$1,500 - \$1,800/acre	\$1,000/acre	55% - 67%	\$11,000,000 - \$14,000,000	\$18,000,000 - \$21,000,000
Totals	\$724,388,936	74%	\$511,000,000				\$268,000,000 - \$352,000,000	\$159,000,000 - \$243,000,000

Footnotes:

- (1) WRP easement compensation paid to landowners is the lesser of the appraised value or the State's geographic area rate. Cited percentages represent NRCS staff's estimates of the number of landowner offers equal to appraised values.
- (2) Average appraised per acre value as estimated by NRCS staff and/or contract appraisers. Through discussions with contract appraisers we determined NRCS' "agricultural" value generally equals the FMV of land before being encumbered by the WRP easement.
- (3) Average residual value of lands encumbered by WRP easements as estimated by NRCS contract appraisers. Residual value of specific parcels may be less than/greater than amounts indicated.
- (4) The Government's commitment to restoring the land to wetland habitat actually enhanced the value for recreation and hunting uses.
- (5) Estimation of potential savings was limited to 100 percent of WRP easement payment amount listed in Column D.

Exhibit E – WRP Residual Values Quantified by Sales or Appraisals

States	Number of Sales or Appraisals	Per Acre Market Values of WRP Easement-Encumbered Lands
California	21	\$150 to \$3,600
Illinois	8	\$404 to \$692
Indiana	3	\$400 to \$500
Iowa	39	\$196 to \$675
Minnesota	15	\$117 to \$712
Missouri	9	\$375 to \$886
Washington	9	\$60 to \$656
Wisconsin	10	\$500 to \$1,406
Total	114	\$60 to \$3,600

Exhibit F – “Before” and “After” Values of Specific WRP Transactions

Exhibit F – Page 1 of 1

	Transaction No.	Easement Acres	“Before” Value Determined by WRP Appraisals and Paid by NRCS	“After” Value of Easement-Encumbered Land	Residual Value as % of NRCS Payment
<u>California</u>	1	3,070	\$2,000/acre	\$1,500/acre	43% ⁽¹⁾
	2	463	\$1,791/acre	\$840/acre	47%
	3	1,696	\$720/acre	\$147/acre	20%
<u>Minnesota</u>	4	131	\$1,495/acre	\$125/acre	8%
	5	39	\$1,334/acre	\$712/acre	53%
	6	134	\$1,342/acre	\$354/acre	26%
<u>Iowa</u>	7	141	\$1773/acre	\$305/acre	17%
	8	371	\$1,073/acre	\$225/acre	21%
	9	382	\$1,728/acre	\$429/acre	25%
	10	150	\$1,796/acre	\$557/acre	31%
	11	882	\$2,427/acre	\$450/acre	18%
	12	160	\$1,559/acre	\$500/acre	32%
	13	81	\$1,752/acre	\$211/acre	12%
	14	176	\$1,402/acre	\$255/acre	18%

Footnote:

⁽¹⁾ In this transaction, the landowner was paid \$2,000/acre, an amount equal to the California State Office’s geographic area rate. The stated percentage of 43 percent represents the relationship between the land’s “before” value of \$3,500/acre and “after” value of \$1,500/acre, as estimated in the contracted appraisal.

Exhibit G – Questionable Crop Base Payments in California

Sample No.	Easement Acres	Crop Base Acres	Other Crop Land Available	Type of Crop(s)	Disallowable Payments from Crop Base Acres
1	628.2	552.5 ⁽¹⁾	Y	Rice	\$273,875
2	588.0	575.3	Y	Rice	
3	522.0	644.0	N	Rice	
4	N/A ⁽³⁾	N/A	N/A	N/A	
5	N/A ⁽³⁾	N/A	N/A	N/A	
6	1,617.1	440.5 ⁽¹⁾	Y	Wheat, Rice, Barley, Upland Cotton	\$11,580
7	463.4	0.0	N	Wheat, Rice, Barley, Upland Cotton	
8	2,608.0	1,638.2 ⁽²⁾	Y	Wheat, Rice, Corn, Sorghum	
9	698.4	575.9 ⁽¹⁾	Y	Wheat, Upland Cotton, Barley, Sorghum	\$30,028
10	667.0	882.2 ⁽¹⁾⁽²⁾	Y	Upland Cotton, Corn, Sorghum, Barley	\$196,116
11	1,696.3	128.0	N	Wheat, Oats (mostly grassland)	
12	345.7	323.6 ⁽¹⁾	Y	Rice	\$235,169
13	133.9	127.6 ⁽¹⁾	Y	Rice	\$91,680
14	102.8	84.5	Y	Rice	
15	356.7	325.3	Y	Rice	
16	1,447.7	1,253.9	Y	Wheat, Rice	
17	301.5	253.4 ⁽²⁾	N	Rice	\$62,295
	12,176.7	7,804.9			\$900,743

Footnotes:

⁽¹⁾ Crop base unnecessarily included in the WRP appraisal (purchased) and not retired from the farm program (\$838,448).

⁽²⁾ Crop base remained on WRP easement land and landowner continued receiving farm payments (\$258,411).

⁽³⁾ Non-applicable - the landowners withdrew their properties from the WRP prior to the closing of the easement.

Exhibit H – Discussion of Project Influence in the Valuation of Easements

Exhibit H – Page 1 of 1

As noted in Finding 2, NRCS has suggested that the residual values associated with WRP easement lands might be considered created by a Federal “project” (i.e., NRCS’ restoration work) and that any enhanced market values associated with restored wetlands should not be recognized in the appraisal process. We reviewed the Federal appraisal rules related to this topic and determined that (1) WRP does not appear to meet the definition of a Federal project, and (2) enhanced values created by Federal projects must be recognized when estimating *easement* compensation and deducted from landowner compensation.

The rules concerning enhancement or diminution of values due to public projects are found in Sections B-10 and B-12 of UASFLA. In order for the project rule to apply, three legal conditions must be met:

- There must be a public purpose requiring the acquisition of the land (e.g., specific parcels of land must be acquired for a Federal highway, dam, etc.);
- The particular lands required for the Federal project must be identified; and
- The Government’s imminent acquisition of the lands must be evident to the public.

A review of the legal criteria suggests that lands acquired under WRP do not meet any of the requirements for a Federal project: WRP is a voluntary program that does not require the acquisition of lands, no particular lands are identified for acquisition, and the program involves no imminent acquisition made known to the public. However, if for some reason WRP were deemed to be a Federal project and, therefore, subject to the project valuation rules cited in UASFLA, any enhanced values associated with restored wetlands would still need to be deducted from a landowner’s WRP easement compensation.

All easements, including WRP easements, are “partial acquisitions” because landowners retain fee title to the land. This is true even when the entire parcel is encumbered by the easement. Sections B-11 and B-12 of UASFLA specify the valuation rules for partial acquisitions and require that any special benefits to the remainder property resulting from the Federal project for which the land is acquired (a kind of project enhancement) must be deducted from the compensation paid in a partial acquisition. Appraisers are directed to quantify the effects of these special benefits by applying the “before and after” rule of valuation; i.e., an estimate of the market value of the land at the time of the acquisition excluding any enhancement or diminution from the Federal project, less the market value of the land after the easement including any special benefit or diminution from the Federal project. Requiring this method of valuation allows acquiring agencies to calculate a reasonable measure of landowner compensation by deducting the appraiser’s estimated remainder (“after” value) from the appraiser’s estimate of the parcel’s “before” value. UASFLA specifies that “any special benefits *must* be considered when appraisers estimate the value of the remainder properties, even though other lands may enjoy the same benefits from the project.”

United States Department of Agriculture



Natural Resources Conservation Service
P.O. Box 2890
Washington, D.C. 20013

JUL 22 2005

SUBJECT: LTP - Wetlands Reserve Program – Compensation
for Easements (Revised Official Draft Report)

TO: Robert W. Young
Assistant Inspector General for Audit
Office of the Inspector General

Attached are the written responses to the revised draft report 10099-3-SF, Wetlands Reserve Program (WRP), Compensation for Easements. We have addressed the proposed action for each recommendation.

Unless stated in the response, all recommendations are scheduled for completion by September 30, 2005. The WRP Manual will be modified to address all of the recommendations requiring actions, including appraisals and appraisal reviews, to comply with the Uniform Appraisal Standard for Federal Land Acquisitions (UASFLA) regulations.

To assist the Agency in this process, we have conducted a National Easement Workshop on July 19 and 20, 2005, and have scheduled a National Program Managers/Operations Workshop on August 22 through August 25, 2005. In part, these workshops will train WRP Program Managers on the valuation methodology and acquisition of appraisal services.

A handwritten signature in black ink, appearing to read "Bruce I. Knight".

BRUCE I. KNIGHT
Chief

Attachment

Natural Resources Conservation Service (NRCS) Responses to Office of the Inspector General (OIG)

RECOMMENDATIONS

Section 1 Appraisal Controls

OIG Recommendation No. 1: Work with appraisal managers at other Federal agencies, such as the Forest Service (FS) or the Department of the Interior (DOI), to create and fill a chief appraiser position.

NRCS Response to Recommendation No. 1: NRCS agrees that a Chief Appraiser is a valuable addition to the NRCS staff and, thus, has employed a State Certified General Appraiser to serve in this capacity.

OIG Recommendation No. 2: Modify technical appraisal review procedures in the WRP Manual to conform to the requirements of 49 C.F.R. 24.104. At a minimum, a qualified review appraiser should examine the presentation and analysis of market information in all appraisals to ensure that they meet the definition of appraisal found in 49 C.F.R. 24.103, and other applicable requirements, including, to the extent appropriate, the UASFLA, and support the appraiser's opinion of value.

NRCS Response to Recommendation No. 2: The WRP Manual will be modified to conform to 49 C.F.R. 24. It is our intent to initiate implementation in fiscal year 2006 with the new funding cycle.

OIG Recommendation No. 3: Modify direction in the WRP Manual (514.28) to conform to appraiser and review appraiser qualification requirements in 49 C.F.R. 24.103(d), including: (1) the establishment of criteria for determining minimum qualifications and competency of appraisers and review appraisers consistent with the scope of work for the appraisal assignment; and (2) the Agency review of the experience, education, training, certification, licensing, designations, and other qualifications of appraisers and review appraisers, using only those determined by the Agency to be qualified.

NRCS Response to Recommendation No. 3: The WRP Manual will be modified to include appraiser and review appraiser qualifications which include being in good standing as a State-certified general appraiser, with appraisers having formal education in conservation easement appraisal training, and for technical reviewers to have at least 40 classroom hours of training in completing technical appraisal reviews. Specifications of work for both appraiser and review appraiser have been rewritten to clarify requirements and deliverables.

OIG Recommendation No. 4: Ensure that staff responsible for processing or negotiating WRP easement acquisitions do not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work.

NRCS Response to Recommendation No. 4: WRP Manual changes will reflect guidance to eliminate potential conflict of interest and require separation of duties. It is recognized that line

officers are responsible for setting priorities for accomplishing the necessary work; this function is unchanged, as the technical performance of the technical appraisal process is unaffected.

OIG Recommendation No. 5: Modify instructions in the WRP Manual (514.28(d)) to direct NRCS staff to submit all WRP easement appraisal reports to qualified Federal review appraisers for examination and approval directly after the contracted appraisal reports have been completed. The review appraiser should, prior to acceptance, seek necessary corrections or revisions, and should identify each appraisal report as recommended (as the basis for the establishment of landowner compensation), accepted (meets all requirements, but not selected as recommended or approved), or not accepted.

NRCS Response to Recommendation No. 5: Part 514.28(d), of the WRP Manual; “Determining Easement Values” will be modified to reflect the submission of all WRP easements appraisal reports to a qualified Federal review appraiser for technical appraisal reviews, prior to issuing any offer and for the reviewer to work with the appraiser to obtain an acceptable appraisal.

OIG Recommendation No. 6: Modify the WRP Manual (514.12) direction to conform to the requirements 49 C.F.R. 24.102(g) and require that changes in appraised easement acreage or other conditions of the estate be made in consultation with the appraiser, who will update the original appraisal amount or conduct a new appraisal if necessary.

NRCS Response to Recommendation No. 6: Part 514.12 of the WRP manual, “Determining Easement Values” will be modified to conform to the requirements 49 CFR 24.102(g) and require that changes in appraised easement acreage, land proposed for easement, or other conditions of the estate be made in consultation with the appraiser, who will modify the appraisal report or conduct a new appraisal if necessary.

OIG Recommendation No. 7: Modify the WRP Manual (514.12) direction to require that any updates or changes to appraised values be reviewed and approved by a review appraiser. If the new appraisal information indicates that a change in the purchase offer is warranted, promptly reestablish just compensation and offer that amount to the owner in writing.

NRCS Response to Recommendation No. 7: Part 514.12 of the WRP Manual, “Determining Easement Values” will be modified to require that updates or changes to appraised values be reviewed and approved by a review appraiser. If the new appraisal information indicates that a change in the purchase offer is warranted, promptly reestablish just compensation and offer that amount to the owner in writing.

OIG Recommendation No. 8: Modify WRP Manual (514.12) direction to require that WRP easement acreage additions, deletions, and substitutions be fully documented and reconciled to the original acreage in the appraisal reports.

NRCS Response to Recommendation No. 8: Part 514.12 of the WRP Manual, “Determining Easement Values,” will be modified to require that WRP easement acreage additions, deletions,

and substitutions be fully documented and reconciled to the original acreage in the appraisal reports by the original appraiser.

OIG Recommendation No. 9: Modify the direction in the WRP Manual (514.28(b) to require use of the referenced appraisal instructions, and direct staff to refer any proposed changes to these instructions to NRCS approved valuation experts for review and approval.

NRCS Response to Recommendation No. 9: Part 514.28(b) of the WRP Manual, “Eligible Restoration Practices” will be modified to require use of the appraisal instructions, and clarify that the State Conservationist must have prior written approval from the Deputy Chief for Programs prior to any policy changes.

OIG Recommendation No. 10: Establish procedures for conducting periodic reviews and evaluations by qualified staff specifically designed to assess the adequacy and operation of prescribed WRP easement valuation controls and for implementing prompt corrective action.

NRCS Response to Recommendation No. 10: The WRP Manual will be modified to reflect procedures for conducting periodic reviews and evaluations by qualified staff specifically designed to assess the adequacy and operation of prescribed WRP easement valuation controls and for implementing prompt corrective action.

Section 2 Residual Value

OIG Recommendation No. 11: Modify WRP easement valuation procedures in the WRP Manual (514.28) to adopt the real property acquisition requirements of 49 CFR Part 24.102(c) requiring appraisals of all real property interests to be acquired, except properties where acquisition costs are \$10,000 or less.

NRCS Response to Recommendation No. 11: Part 514.28 of the WRP Manual, “Determining Easement Values,” will be modified to reflect Federal appraisal practices including, to the extent appropriate, compliance with the UASFLA and conditions applicable to waivers of appraisals up to \$10,000 in acquisition costs.

OIG Recommendation No. 12: Modify WRP Manual 514.29 to discontinue use of geographic area rates that are intended to limit WRP easement compensation to less than fair market value. (i.e., appraised value).

NRCS Response to Recommendation No. 12: Part 514.29, of the WRP Manual, “Making the Offer to the Landowner” will be modified to meet the real property appraisal requirements in 49 C.F.R. Part 24.

OIG Recommendation No. 13: Working with Federal appraisal experts, modify WRP easement valuation procedures to require, among other things, that easement appraisals follow established and commonly accepted Federal appraisal practices, standards, and techniques. The appraisal instructions should, at a minimum: (1) specify that the purpose of the appraisal is to estimate the effect of a partial acquisition (WRP easement), and (2) instruct appraisers to

estimate WRP easement compensation as the difference between the fair market value on the entire property before the easement and the fair market value of the entire property after the easement.

NRCS Response to Recommendation No. 13: While NRCS does not agree with some elements of the OIG methodology, particularly the statistical sampling and conclusions drawn from it, we accept for purposes of this audit that our valuation methods have not adequately considered residual values in some cases, resulting in payments having been made to landowners which exceed the statutory cap at 16 U.S.C. 3837a (f). Accordingly, NRCS will hereafter employ commonly accepted Federal appraisal practices, standards, and techniques. We will also specify that the purpose of the appraisal is to estimate the effect of a partial acquisition and instruct the appraiser to estimate the compensation as the difference between the before and after value.

Section 3 Federally Purchased Crop Base

OIG Recommendation No. 14: Clearly incorporate the WRP 96-2 crop base direction in the body of the WRP Manual and notify all field staff of these requirements.

NRCS Response to No. 14: NRCS will clarify guidance in the WRP Manual, and will work with FSA to develop appropriate procedures for landowners who decide to retire crop acreage bases, as applicable.

OIG Recommendation No. 15: Establish written direction requiring that landowners applying for participation in the WRP to be notified that crop base acres included in the easement appraisals must be retired, and requiring landowners to complete and sign FSA Form CCC-505, specifying the type and amount of base slated for such treatment.

NRCS Response to No. 15: NRCS agrees to issue guidance that requires written notification to landowners regarding the treatment of crop acreage bases in the appraisal process.

OIG Recommendation No. 16: Instruct contract appraisers to document the type and amount of crop base included in the WRP easement appraisals and direct NRCS staff to reconcile that information to the crop base data cited in FSA Form CCC-505 to ensure that the base included in the value is the base retired.

NRCS Response to No. 16: NRCS agrees to issue guidance clarifying the treatment of crop acreage bases and adopting safeguards to maximize the probability that FSA retires crop bases when ordering appraisals and during technical reviews.

OIG Recommendation No. 17: Establish procedures directing NRCS staff to provide FSA with copies of completed and signed FSA CCC-505 forms at the time of easement recording to ensure that federally purchased crop base is appropriately retired.

NRCS Response to No. 17: NRCS agrees to issue guidance to clarify policy related to crop acreage bases and to work with FSA to develop procedures that are mutually agreeable to both agencies.

OIG Recommendation No. 18: Through review of appraisal reports and discussions with contract appraisers, identify instances where crop base values have been included in pending WRP easement valuations, and work with FSA staff to ensure that the base is appropriately retired from the farm program.

NRCS Response to No. 18: Thorough review of appraisal reports and discussions with contract appraisers to identify instances where crop base values have been included in pending WRP easement valuations, NRCS will work with FSA staff to ensure that the base is appropriately retired from the farm program.

OIG Recommendation No. 19: Modify the WRP Manual instructions to require NRCS State office staff to provide, at least annually, a listing of all recorded WRP easements, sorted by county, to FSA State offices and NRCS field offices.

NRCS Response to No. 19: The WRP Manual will be modified requiring NRCS State office staff to provide, at least annually, a listing of all recorded WRP easements, sorted by county, to FSA State offices and NRCS district offices.

OIG Recommendation No. 20: Direct each NRCS State office to provide a listing of all previously recorded WRP easements, sorted by county, to the corresponding FSA State office so FSA can ensure that there are no landowners receiving crop base payments on lands subject to WRP easements.

NRCS Response to No. 20: The WRP Manual will be modified to require NRCS State offices to provide, at least annually, a listing of all recorded WRP easements, sorted by county, to FSA State offices and NRCS district offices so that FSA can ensure that there are no landowners receiving crop base payments on lands subject to WRP easements.



United States
Department of
Agriculture

Farm and Foreign
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Farm Service
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TO: Philip Sharp, Chief
Audits, Investigations, State and County Review Branch

FROM: *for* John A. Johnson *Steven A. Connelly* JUN 21 2005

SUBJECT: Official Draft - Wetlands Reserve Program,
Compensation for Easements

*FAS
6/22/05
W*

Finding 4, Recommendation 21

Coordinate with the NRCS California State Office staff and ensure crop base acres on the WRP easement-encumbered lands identified during the audit are properly reassigned or retired from participation in FSA farm subsidy programs, and, after coordinating with OIG Investigations, recover ineligible farm subsidy payments in the approximate amount of \$62,295 to the extent practicable.

FSA Response

OIG declined the investigation. Therefore, the producers have been informed of the base reductions and resulting overpayments and have appealed the determination to the COC.

Finding 4, Recommendation 22

In consultation with OIG Investigations, determine in the California cases where producers did not report crop base reductions whether the producers' actions constitute misrepresentation or scheme or device for FSA program purposes. If so, determine, according to applicable program provisions, the consequences of such violations and take appropriate action.

FSA Response

The California State Committee is scheduled to review the case on July 6 to determine if misrepresentation provisions apply.

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Glossary of Terms

Administrative Review – Review completed by NRCS staff to ensure that the land valuations cited in WRP appraisal reports are reasonable from a “business decision-making perspective.”

Agricultural Value – A term used by NRCS to indicate land value estimates based on agricultural use only. Estimated fair market agricultural values are to exclude the value of water, hunting, fishing, development, and mineral rights.

Appraisal – As defined in USPAP, “the act or process of developing an opinion of value.”

Appraisal Report – A written report stating an appraiser’s official opinion of value.

Appraisal Review (Technical Review) – Performed under Standard 3 of USPAP, when an appraiser acting as a reviewer develops and reports a credible opinion as to the quality of another appraiser’s work.

Contract Appraiser – Appraiser who is hired by NRCS on a contract basis to perform appraisals.

Crop Base Acres – The number of acres of a crop, established by the election of the landowner, used to calculate FSA direct and counter-cyclical farm subsidy payments.

Easement – An interest in a piece of land defined in a deed whereby the landowner conveys all rights, title, and interest in a property except those rights, title, and interests specifically reserved to the landowner in the easement deed.

Fair Market Value – The amount of cash, or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller and a reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal.

Fee Simple – The estate in land that a person has when the lands are given to him and his heirs absolutely, without any end or limit put to his estate. It is the most common form of real estate ownership and is the most complete ownership interest one can have in real property.

Highest and Best Use – The reasonably probable and legal use of property that is physically possible, appropriately supported, and financially feasible, and that results in the highest value.

Residual Value – The value of the property rights retained by the landowner after the easement restriction is implemented.

State-Certified Appraiser – An appraiser issued a certification by a State real estate appraisal board or meeting specific minimum criteria as established by the Appraiser Qualification Board of the Appraisal Foundation.

Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) – Sets forth the general principles applicable to the appraisal of property for Federal land acquisitions by both voluntary means and condemnation. Prepared for use by appraisers to promote uniformity in the appraisal of real property acquired by Federal agencies on behalf of the United States.

Uniform Standards of Professional Appraisal Practice (USPAP) – Establishes requirements for professional appraisal practice, including appraisals, appraisal reviews, and consulting. The intent of these standards is to promote and maintain a high level of public trust in professional appraisal practice.

USPAP Standard 3 – USPAP standard that refers to appraisal review, development, and reporting. An appraisal review, done by a properly qualified appraiser, is the act or process of developing and communicating an opinion about the quality of work completed by another appraiser, encompassing the completeness, adequacy, relevance, appropriateness, and reasonableness of the work under review.

Informational copies of this report have been distributed to:

Chief, NRCS, Attn: Director, OMOD	(10)
Administrator, FSA, Attn: Director, ORAS	(10)
Office of the Chief Financial Officer	
Director, Planning and Accountability Division	(1)
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