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Office of Inspector General
Western Region

Audit Report

Natural Resources Conservation Service Wetlands Reserve Program Wetlands Restoration and Compliance

Report No. 10099-4-SF
August 2008



UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

Washington, D.C. 20250



DATE: August 25, 2008

REPLY TO
ATTN OF: 10099-4-SF

TO: Arlen L. Lancaster
Chief
Natural Resources Conservation Service

ATTN: Diane Gelburd
Director
Operations Management and Oversight Division

FROM: Robert W. Young /s/
Assistant Inspector General
for Audit

SUBJECT: Wetlands Reserve Program - Wetlands Restoration and Compliance

This report presents the results of the subject review. Your written response to the official draft report, excluding the attachments, is included as exhibit F. Excerpts from the response and the Office of Inspector General's (OIG) position are incorporated into the relevant sections of the report. Based on the information in your written response, we have accepted your management decision on Recommendations 1, 2, 3, 4, 5, 6, and 8. Please follow your internal agency procedures in forwarding final action correspondence to the Office of the Chief Financial Officer.

Based on your written response, management decision has not been reached on Recommendation 7. The information needed to reach management decision on this recommendation is set forth in the OIG Position section after this recommendation. In accordance with Departmental Regulation 1720-1, please furnish a reply within 60 days showing the actual or planned timeframe for implementing this 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

Under the Wetlands Reserve Program (WRP), the Natural Resources Conservation Service (NRCS) can purchase conservation easements from eligible landowners who want to restore their land to a natural state (e.g., wetlands). The program also offers landowners technical and financial support to restore or enhance qualified wetlands on their property. By the end of fiscal year (FY) 2006, almost 2 million acres were enrolled in WRP under 9,000 easements and 1,100 restoration agreements.¹ Under the 1996 Farm Bill, NRCS received over \$834 million to purchase and restore easements during FYs 1997-2002. Under the 2002 Farm Bill, NRCS received almost \$1.6 billion during FYs 2002-2007.

This is one of three recent audits we conducted to review NRCS' controls over WRP. Our prior two audits examined controls over appraisals and crop bases on easements.² This audit's objective was to review NRCS' administration and monitoring of the wetland restoration process. We assessed the agency's (1) procedures to ensure accurate and allowable payments for restoration costs, (2) monitoring of enrolled lands to ensure compliance with WRP, and (3) process for selecting applicants for WRP enrollment. To conduct our audit, we selected 153 easements and restoration agreements in 6 States and 19 counties for file review, and we visited 92 of them onsite.

In reviewing payments for wetland restoration in our six States, we found that NRCS was obligating expired funds. Therefore, we expanded our review nationwide. We determined that NRCS incurred obligations in 38 States with expired funds for new easements and restoration work, thereby potentially violating the appropriation-level prohibition of the Anti-Deficiency Act (ADA).³ NRCS had assumed that 1996 Farm Bill funds—like 1990 Farm Bill funds—were no-year funds and were available for obligation in subsequent fiscal years. However, this changed with the 1996 Farm Bill, which restricted the period of availability for WRP funds to FYs 1996 to 2002.

We requested a legal opinion from the Office of the General Counsel (OGC) as to whether NRCS violated any appropriation laws, including the ADA, in FYs 2002 through 2006 by entering into new obligations

¹ For simplicity, hereafter we include restoration agreements when we refer to easements since WRP sites are predominately easements.

² OIG Audit No. 10099-3-SF, "Compensation for Easements," (August 2005) and Audit No. 50099-11-SF, "Crop Bases on Lands with Conservation Easements – State of California" (August 2007).

³ Title 31 of the U.S.C. governs financial operations of agencies and includes provisions originally enacted as the ADA, 31 U.S.C. §1341, which prohibits obligations or expenditures in excess of amounts available in, or in advance of, an appropriation. The ADA specifies the process by which funds are apportioned (by the Office of Management and Budget) to agencies and sets forth penalties for violations.

in those years using funds authorized under the 1996 Farm Bill.⁴ OGC opined that NRCS improperly obligated 1996 Farm Bill funds after the authority to do so ceased to exist and thereby violated 31 *United States Code* (U.S.C.) §1301. However, OGC also opined that by adjusting its accounts, NRCS can avoid the necessity of reporting an ADA violation to Congress and the President.

We also concluded that NRCS did not annually monitor 88 percent of our sampled easements, which contributed to violations on 37 of 92 easements we visited. In addition, we found that, in two States, NRCS paid more than its capped share of restoration costs for two 30-year easements.⁵ However, nothing came to our attention to indicate that NRCS was not correctly selecting applicants for WRP enrollment.

NRCS Incurred New Obligations During the 2002 Farm Bill Period With Expired Funds from the 1996 Farm Bill Period.

The 1996 Farm Bill restricted the period of availability for WRP funds to FYs 1996-2002.⁶ However, during the 2002 Farm Bill period, 38 NRCS State offices incurred new obligations for over 1,400 contracts with expired WRP funds authorized under the 1996 Farm Bill. New obligations were made for (1) easement purchases and (2) restoration outside the scope of existing contracts. We consulted with OGC about NRCS' use of funds, and it opined that NRCS violated the appropriation-level prohibition of ADA.

According to ADA, "An officer or employee of the United States Government . . . may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation."⁷

OGC opined that NRCS violated ADA when it violated the "Purpose Statute," which states that "appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law."⁸ This means that upon the expiration of the 1996 Farm Bill, any remaining unobligated or deobligated funds would not be available for new objects—that is, easements and restorations approved under the 2002 Farm Bill.

⁴ Public Law 104-127 (enacted Apr. 4, 1996).

⁵ The 1996 Farm Bill states that "in the case of a 30-year easement, [NRCS shall] pay the owner an amount that is not less than 50 percent, but not more than 75 percent, of the eligible costs." The 2002 Farm Bill did not change this provision.

⁶ Public Law 104-127 (enacted Apr. 4, 1996).

⁷ 31 U.S.C. §1341(a) (in effect on Jan. 22, 2002).

⁸ 31 U.S.C. §1301(a) (in effect on Jan. 22, 2002), commonly known as the Purpose Statute.

In a meeting on November 2, 2007, NRCS officials agreed that the agency needs to cure⁹ any obligations on contracts where it incorrectly used 1996 Farm Bill funds. We intend to follow up on this issue during FY 2008 to determine whether NRCS cured the ADA violation by properly adjusting its accounts.

NRCS Did Not Annually Monitor 88 Percent of Our Sampled Easements.

During calendar years 2003-2005, 5 of the 6 States we reviewed did not annually monitor 134 of 153 (88 percent) of our sampled WRP easements.¹⁰ We visited 92 of the 153 easements and found violations on 37. In one case, we found substantial dumping of hazardous debris, which destroyed about 8 acres of restoration. Generally, the State offices told us that they lack the resources to annually monitor the easements.

We, too, determined that these five States were not able to reasonably monitor an increasingly large number of WRP easements on an annual basis with the resources available to them. During calendar years 2000-2005, the 5 State offices' monitoring responsibility almost doubled—from 1,584 WRP easements to 2,971. Meanwhile, these States lost almost a quarter of their WRP full-time equivalents (FTEs)—from 69 to 53.¹¹ With easements increasing and FTEs decreasing, NRCS had fewer resources to monitor its easements for continuing compliance with program requirements.

Two NRCS State Offices Paid More Than Their Share of Restoration Costs for Two 30-year Easements.

For 30-year easements, the 1996 Farm Bill allows NRCS to pay up to 75 percent of the restoration costs with the landowner paying the remainder.¹² We found that the NRCS Florida and Arkansas State Offices paid more than the statutory 75-percent cap on two 30-year easements, which totaled \$418,598 more than the allowed Federal share.

Recommendations In Brief

Concerning the obligation of expired 1996 Farm Bill funds for 2002 Farm Bill purposes during FYs 2002-2006, NRCS should adjust WRP accounts with funds available for the appropriate funding year;

⁹ A legal term to describe correcting accounting transactions using expired funds with funds available for the appropriate funding year.

¹⁰ NRCS policy did not make a fiscal year or calendar year specification for annual monitoring. The sample States we selected were inconsistent in their monitoring planning regarding the calendar year or fiscal year election. For simplicity and consistency, we used calendar year in conducting our review on NRCS' compliance with the monitoring requirement.

¹¹ One FTE is equal to one work year or 2,080 non-overtime hours.

¹² Public Law 104-127 (enacted Apr. 4, 1996).

otherwise, the agency should report the deficiency as mandated by ADA.

Concerning the monitoring of restored WRP easements, NRCS should develop a monitoring system to prioritize the easements and optimize monitoring resources by implementing, for example, a risk-based system. NRCS should also develop interim measures to address the monitoring problem before the new system is implemented.

Concerning restoration cost shares, NRCS should collect the \$418,598 in cost shares from the landowners in Florida and Arkansas.

**Agency
Response**

In its written response, dated August 5, 2008, NRCS concurred with the reported findings and recommendations. NRCS' response, excluding the attachments, is included in exhibit F of this report.

OIG Position

We accept NRCS' management decision for Recommendations 1, 2, 3, 4, 5, 6, and 8. The actions needed to reach management decision on Recommendation 7 are provided in the OIG Position section after this recommendation.

Abbreviations Used in This Report

ACL	Audit Command Language
ADA	Anti-Deficiency Act
CCC	Commodity Credit Corporation
CFO	Chief Financial Officer
CY	Calendar Year
FMD	Financial Management Division
FTE	Full-Time Equivalent
FY	Fiscal Year
GAO	Government Accountability Office
NRCS	Natural Resources Conservation Service
OBPA	Office of Budget and Program Analysis
OCFO	Office of the Chief Financial Officer
OGC	Office of the General Counsel
OIG	Office of Inspector General
OMB	Office of Management and Budget
U.S.C.	<i>United States Code</i>
USDA	United States Department of Agriculture
WRP	Wetlands Reserve Program

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Background and Objectives

Background

WRP is a voluntary program that offers eligible landowners technical and financial support to restore or enhance qualified wetlands on their property. It is a nationwide program that was authorized by the 1990 Farm Bill and reauthorized by the 1996 and 2002 Farm Bills.¹³ WRP is administered by NRCS in agreement with other cooperating agencies and organizations. Its mission is to achieve the greatest wetland functions and values, along with optimum wildlife habitat, on every acre enrolled in the program.

Under WRP, NRCS purchases conservation easements from landowners and then develops and implements a restoration plan with the goal of completing restoration generally within 3 years. Easements are legally binding deed restrictions that are placed on a parcel of land. Participants thereby limit future use of their land but retain ownership for certain rights such as hunting and fishing.

Participants have the option of enrolling eligible lands in the program through permanent conservation easements, 30-year conservation easements, or 10-year restoration agreements (an alternative that restores wetlands without requiring a landowner to sell an easement). As of FY 2006, almost 1.9 million acres have been enrolled in WRP through 8,872 easements and 1,101 restoration agreements.

Under the 1996 Farm Bill, the Office of Management and Budget (OMB) apportioned over \$834 million to NRCS to purchase and restore easements for FYs 1997-2002.¹⁴ Under the 2002 Farm Bill, OMB apportioned \$1.6 billion for FYs 2002-2007.

Program Funding

When WRP was authorized in 1990, the statute stated “there is authorized to be appropriated without fiscal year limitation such sums as may be necessary to carry out” the program. At that time, there were no restrictions on the amount of funds that could be used, or the period of availability in which to use them.¹⁵ However, the 1996 Farm Bill changed this by authorizing the use of Commodity Credit Corporation (CCC) funds “for each of the fiscal years 1996 through 2002.” While it did not restrict the amount of funds available to the program, it did restrict the funds’ period of availability to an annual

¹³ Public Law 101-624 (enacted Nov. 28, 1990) is also known as the 1990 Farm Bill; Public Law 104-127 (enacted Apr. 4, 1996) is known as the 1996 Farm Bill; and Public Law 107-171 (enacted May 13, 2002) is known as the 2002 Farm Bill.

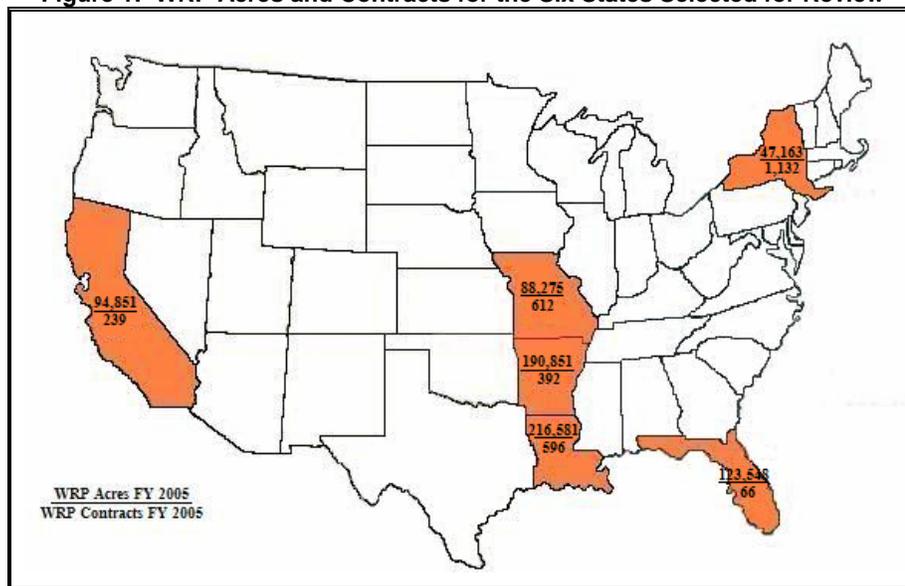
¹⁴ These funds are financial assistance funds, which are only for purchasing and restoring easements; they do not include technical assistance funds, which pay NRCS’ salaries for WRP, program administration costs, etc.

¹⁵ These funds are more commonly known as no-year funds.

basis. That is, WRP was funded annually. Unobligated funds at the end of the fiscal year were not available for new obligations.

The 2002 Farm Bill reauthorized the use of CCC funds to carry out WRP for “each of the fiscal years 2002 through 2007.” NRCS was authorized to enroll over 1 million additional acres in the program for a total enrollment cap of 2.275 million acres. Figure 1 shows cumulative amounts of acres and contracts, as of FY 2005, for each of the six States we selected for review.

Figure 1: WRP Acres and Contracts for the Six States Selected for Review



Both the 1996 and 2002 Farm Bills authorized the use of CCC funds, which are borrowed from the U.S. Department of the Treasury, to finance WRP. According to the Government Accountability Office (GAO), this borrowing authority is akin to an open line of credit—CCC obtains funds by borrowing against this line of credit on an as-needed basis. Congress appropriates funds each fiscal year to replenish the line of credit.¹⁶

USDA’s Office of Budget and Program Analysis (OBPA) consults with NRCS to determine how much funding to request for WRP. OBPA submits the request to OMB, which annually approves it, apportions the CCC funds available for WRP obligations, and establishes the period of availability for the funds.¹⁷ Both the period of availability and WRP funds are limited by OMB’s annual apportionments. This system “is intended to achieve an effective and orderly use of available budget authority, and to reduce the need for supplemental or deficiency

¹⁶ GAO’s “Commodity Credit Corporation: Information on the Availability, Use, and Management of Funds” (Apr. 1998).

¹⁷ OMB Circ. A-11 states “An apportionment means a distribution made by OMB of amounts available for obligation in an appropriation or fund account into amounts available for specific time periods . . . The apportioned amount limits the obligations that may be incurred” (Jun. 2006).

appropriations.”¹⁸ Table 1 below lists OMB’s annual apportionments for the 1996 Farm Bill (FYs 1997-2002) and the 2002 Farm Bill (FYs 2002-2007).

Table 1: OMB’s Annual WRP Apportionments

Authority	FY	WRP Apportionments
1996 Farm Bill	1997 ^a	\$137,884,442
	1998	\$218,597,000
	1999	\$125,600,000
	2000	\$164,729,000
	2001	\$167,557,000
	2002 ^b	\$20,000,000
	Total	\$834,367,442
2002 Farm Bill	2002	\$275,000,000
	2003	\$306,000,000
	2004	\$280,328,000
	2005	\$246,123,300
	2006	\$225,239,878
	2007	\$255,000,000
	Total	\$1,587,691,178

a. The first apportionment for 1996 Farm Bill funds occurred in FY 1997.
b. OMB approved two WRP apportionments - \$20 million for the 1996 Farm Bill and \$275 million for the 2002 Farm Bill.

Funds obligated under one farm bill may be expended during the next farm bill, as stated in 31 U.S.C. §1502(a), as long as the obligations were properly incurred during the period of availability. However, “the appropriation or fund is not available for expenditure for a period beyond the period otherwise authorized by law.”¹⁹

Application Selection and Program Payments

Applications are submitted to local NRCS or conservation district offices by landowners. They are subsequently evaluated and ranked by the NRCS State offices according to broad national guidelines as well as State-specific objectives. The State offices then select applicants with the highest rankings to approve for funding.²⁰

Landowners that are enrolled in WRP receive payments for the conservation easements and for the cost of restoring the enrolled lands. Easement payments may be made in one lump sum, or distributed over 5 to 30 annual payments. Restoration cost-share payments are made as the restoration practices are completed and may be paid to the landowner directly or to a contractor depending on the original agreement. Landowners may also receive restoration funding from

¹⁸ *Principles of Federal Appropriations Law*, 2nd ed., vol. I, ch. 1, D.3.a (Jul. 1991).

¹⁹ 31 U.S.C. §1502(a) (in effect on Jan. 22, 2002).

²⁰ The State Conservationist has the authority to give priority to an easement offer in a particular geographic area even though the individual easement offer might not otherwise rank high enough to be accepted.

other public and/or private sources, and the contributed funds may be considered as part of the landowner's cost-share contribution. However, the total cost-share assistance from all sources cannot exceed 100 percent of the total cost of the restoration.

Restoration and Monitoring

Conservation easements and restoration agreements require the landowner to cooperate with NRCS in the restoration, protection, enhancement, maintenance, and management of land according to the terms of its Wetlands Reserve Plan of Operations (also called the conservation plan). The conservation plan outlines specific restoration activities for an enrolled project to rehabilitate the degraded or lost habitat to its original vegetation and hydrology. At least 70 percent of the wetland and upland areas must be restored to their original natural condition to the extent practicable. The remaining 30 percent of the project area may be restored to other than natural conditions. Restoration is expected to be completed within 3 years of easement acquisition, though it can take longer.

NRCS and its partners, including conservation districts, continue to provide assistance to landowners after completion of restoration activities. This assistance may be in the form of reviewing restoration measures, clarifying technical and administrative aspects of the easement, clarifying project management needs, and providing basic biological and engineering advice on how to achieve optimum results for wetland dependent species.

Program participants control access to the land and may lease the land to others for hunting, fishing, and other undeveloped recreational activities. At any time, participants may request that additional activities be evaluated to determine if such activities are compatible uses for their enrolled lands. Compatible-use authorizations are granted if the requested activities are fully consistent with the protection and enhancement of the wetland.

Program monitoring is delegated to each State Conservationist, who is required to develop a process to ensure that full wetland functions and values are being achieved and maintained. NRCS policy requires annual monitoring of restored easement sites by either an onsite inspection or through an off-site evaluation.²¹ Onsite inspections are required, at a minimum, once every 3 years, unless a violation is found, then onsite inspections are required more frequently.²² During

²¹ Off-site evaluations are referred to as "remote sensing" in NRCS' "Conservation Programs Manual, Wetlands Reserve Program" (the WRP Manual) and are often completed by reviewing aerial photographs of the easement site.

²² Onsite inspections are required every 6 months for a period of 18 months after a violation has been corrected on the easement.

the 2-year interval between onsite inspections, off-site evaluations can be counted as part of the annual monitoring requirement.

Objectives

The overall objective of the audit was to assess NRCS' administration of the restoration process for wetlands enrolled in WRP. To determine this, we examined the agency's (1) procedures to ensure accurate and allowable payments for restoration costs, (2) monitoring of enrolled lands to ensure compliance with WRP, and (3) process for selecting applicants for WRP enrollment.

Findings and Recommendations

Section 1 WRP Funding

Finding 1

NRCS Incurred New Obligations During the 2002 Farm Bill Period With Expired Funds from the 1996 Farm Bill Period

During the 2002 Farm Bill period, three of the six sampled NRCS State offices incurred new obligations with expired funds from the 1996 Farm Bill.²³ Due to the potential severity of the problem, we expanded our review nationwide and found a total of 38 State offices that incurred new obligations for over 1,400 contracts with 1996 Farm Bill funds. This occurred because NRCS assumed that 1996 Farm Bill funds—like 1990 Farm Bill funds—were no-year funds and were available for obligation in subsequent fiscal years. Therefore, NRCS issued incorrect guidance allowing its State offices to incur new obligations with expired 1996 Farm Bill funds. We concluded that these actions were potentially in violation of the Anti-Deficiency Act (ADA) because NRCS obligated funds beyond their period of availability. We requested, and OGC provided, a legal opinion that concurred with our assessment. However, OGC opined that NRCS may cure the ADA violation by adjusting its accounts with the appropriate fiscal year funds, so long as the adjustments do not exceed OMB’s apportionment for any of those years.

The 1990 Farm Bill authorized funds “to be appropriated without fiscal year limitation” to carry out WRP.²⁴ This changed with the 1996 Farm Bill, which restricted the period of availability for WRP funds to FYs 1996 to 2002. It stated, “for each of fiscal years 1996 through 2002, the Secretary shall use the funds . . . to carry out the programs authorized by . . . [WRP].”²⁵ The 2002 Farm Bill also restricted the period of availability for WRP funds to FYs 2002 to 2007 by stating that “for each of fiscal years 2002 through 2007, the Secretary shall use the funds, facilities, and authorities of the Commodity Credit Corporation to carry out [WRP].”²⁶

One of our objectives was to evaluate the accuracy and allowability of payments NRCS made to landowners for their restoration costs. We compared actual payments with original obligations and reviewed obligation reports for our six sampled States. These reports showed a number of contracts obligated after FY 2002 using expired funds from the 1996 Farm Bill period.²⁷

²³ These funds were expired because the 1996 Farm Bill authority to use CCC funds for the WRP had expired.

²⁴ Public Law 101-624 (enacted Nov 28, 1990).

²⁵ Public Law 104-127 (enacted Apr. 4, 1996).

²⁶ Public Law 107-171 (enacted May 13, 2002).

²⁷ Expired funds came from two sources: deobligations from existing 1996 Farm Bill contracts and unobligated balances from apportionments during the 1996 Farm Bill period.

Violation of the Appropriation-level Prohibition of ADA

Three of the six sampled States used expired funds from the 1996 Farm Bill to incur new obligations totaling about \$9.3 million for 32 easements during the 2002 Farm Bill period. These new obligations were for (1) conservation easement purchases, and (2) restoration outside the scope of existing contracts.

According to the appropriation-level prohibition of the ADA, “An officer or employee of the United States Government . . . may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation.”²⁸

At our request, OGC reviewed NRCS’ actions and opined that NRCS violated the appropriation-level prohibition of ADA when it violated the “Purpose Statute,” which states that “appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.”²⁹ This means that upon the expiration of the 1996 Farm Bill, any remaining unobligated funds would not be available for new objects—that is, easements and restorations approved under the 2002 Farm Bill. Examples found during our audit follow.

1. New Easement Purchased with 1996 Farm Bill Funds. On September 27, 2004, the NRCS Arkansas State Office purchased a WRP easement from a landowner using expired 1996 Farm Bill funds (fund code 57P).³⁰ The State office obligated \$7 million (\$5.9 million to purchase the easement and \$1.1 million to restore the wetland) for the easement under contract no. 66-7103-4-0491. The obligation record is shown below (see arrows):

PERMANENT OBLIGATION Wetlands Reserve Program Contracts			
CONTRACT NUMBER	66-7103-4-0491		
DOCUMENT AMOUNT	\$7,000,000		
REQUISITION NUMBER	_____		
MO NUMBER	_____		
DATE LTR OF INTENT SIGNED	_____		
DATE OPTION TO PURCHASE SIGNED	September 27, 2004		
FISCAL YEAR	2004 ←		
FUND CODE	00-57P ←		
	<u>LINE 01</u>	<u>LINE 02</u>	<u>LINE 03</u>
OBJECT CLASS	321 1	321 2	321 3
	(EASEMENT VALUE)	(COST SHARE)	(RELATED COSTS)
AMOUNT	\$5,930,000	\$1,070,000	\$0

²⁸ 31 U.S.C. §1341(a) (in effect on Jan. 22, 2002).

²⁹ 31 U.S.C. §1301(a) (in effect on Jan. 22, 2002), commonly known as the Purpose Statute.

³⁰ Annually, NRCS allocates WRP funds to its State offices, which then obligate the funds to purchase and/or restore easements. NRCS assigned fund code 57 to 1996 Farm Bill funds and fund code 77 to 2002 Farm Bill funds, which the State offices use to obligate and expend funds. For FYs 1996-2000, NRCS combined the years under fund code 57P when the financial system MIDAS was converted to FFIS.

2. New 2004 Restoration Contract Obligated with 1996 Farm Bill Funds. On February 12, 1996, the NRCS California State Office purchased two conservation easements from a landowner under contract nos. 66-9104-5-07 and 66-9104-5-08. In September 2004, the State office signed a new (i.e., not modified) restoration plan for these easements under contract no. 66-9104-4-289.³¹ The State office then obligated \$157,500 using expired 1996 Farm Bill funds (fund code 57P) to pay for the restoration, as shown on the following two screen prints from NRCS' accounting system (see arrows).

```

ACTION: R TABLEID: OBLK USERID: UPHO
*** ORDERS HEADER INQUIRY TABLE
KEY IS TRANS CODE, ORDER NUMBER
TRANS CODE: M1 ORDER NUMBER: 6691044289
VENDOR CODE: 941149574 A PO DATE: 09 29 04 ←
NAME: CALIFORNIA WATERFOWL ASSN
COMMENTS:
CONTACT: 081903 CHG/1609772BW
INSP/ACC DAYS: 00 BUYER: CCOMM FLAG
NEG PYMT DAYS: 00 TEXT TYPE: FOB
NO OF OPTIONS: 00 PURCH METHOD:
ALT PAYEE: /
ORDERED AMT: 157,500.00 ←
CLOSED AMT: 0.00
ACCRUED AMT: 0.00 PRINT PO: N L
EXPENDED AMT: 0.00 L
OUTSTANDING AMT: 157,500.00 CONF ORDER: N
ACCEPTED AMT: 0.00 RCVR REQD: N
INVOICED AMT: 0.00 INV REQD: N
MISC REF AMT: 0.00 CONTRACT #:
HOLDBACK AMT: 0.00 RESP PERSON:
DISCOUNT % / DAYS: 0.000 / 00 ; 0.000 / 00 ;

```

```

USERID: UPHO
SE ORDER ACCOUNTING LINE INQUIRY TABLE ***
R NUMBER, LINE NO
ORDER NUMBER: 6691044289
: 001 BFYS: 00 FUND: 57P ←
10 YR LTC LAST CHANGE STATUS:
RPTG: PO LINE AMT: 157,500.00
/ CLOSED AMT: 0.00
/ JOB: ACCRUED AMT: 0.00
BOC/SUB: 4116 EXPENDED AMT: 0.00
HOLDBACK AMT: 0.00
CLOSED FUND: OUTSTANDING AMT: 157,500.00
: BFYS: FUND:
RPTG: LAST CHANGE STATUS:
/ PO LINE AMT:
/ CLOSED AMT:
/ JOB: ACCRUED AMT:
BOC/SUB: EXPENDED AMT:
HOLDBACK AMT:
CLOSED FUND: OUTSTANDING AMT:

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³¹ NRCS can restore multiple easements under one restoration contract when the easements are owned by the same landowner as in this case.

When we asked the NRCS State offices what allowed them to enter into new WRP obligations with funds from previous farm bills, they referred to a communication issued by the national office in December 2003 to all State offices.³² The communication stated:

“NRCS is authorized to utilize all funds to administer the WRP. When a funding source is depleted, the activities can be carried out using other WRP funding sources, as authorized. For example, an obligation originally recorded under Fund 80 requires an additional \$10,000. Record the \$10,000 using either fund 57 or current year fund 77.”

The communication also stated that fund code 57 can be used “for new contracts and modifications.” Since this was nationwide guidance, we expanded our analysis to include all obligations incurred nationwide with expired 1996 Farm Bill funds during the 2002 Farm Bill period—FYs 2002-2006.

To calculate the extent to which NRCS obligated expired funds nationwide, we requested all fund code 57 transactions for FYs 2002-2006 (the 2002 Farm Bill period). NRCS provided data on all contracts processed in these fiscal years as of September 30, 2006. Since the data comprised 40,837 transactions, we used a software program—Audit Command Language (ACL)—to conduct our analysis.

We sorted the transactions into separate files by fiscal year.³³ For each fiscal year, we then attempted to determine the number of contracts and the total transactions obligating expired 1996 Farm Bill funds. To identify the number of contracts with new obligations using 1996 Farm Bill funds, we started with the total transactions for that fiscal year and we deducted the following.

1. Payments. NRCS obligated expired funds to purchase new easements or restore wetlands. When the agency made payments against those obligations using expired funds, we excluded the payments to avoid counting the same transactions twice.
2. Transactions within the same contract. The data that NRCS provided showed multiple lines of obligation and deobligation entries under the same contract number, meaning one contract had multiple obligation and deobligation transactions. To determine the number of contracts that used expired funds in each fiscal year, we used an ACL search for duplicate contract numbers, which yielded

³² Financial Management Division (FMD) Communication 04-025 (Dec. 2003).

³³ We used the “acceptance date” column in the data that NRCS provided to identify the fiscal year of the transactions. We divided the data on a year-by-year basis because we wanted to determine if NRCS exceeded its WRP apportionment during any of those years.

a total number of duplicate lines. Subtracting that number from the total number of obligation and deobligation transactions gave us the number of contracts with obligations and deobligations.

3. Contracts with net deobligations. We excluded the number of contracts showing net deobligations since any deobligations would correct any accounting transactions that were made using expired funds.
4. Contracts with no obligation balance. In cases where the agency improperly obligated funds but made an accounting adjustment by deobligating those funds in the same year, we did not include those contracts.

Using the above methodology, we calculated the number of contracts with new obligations using 1996 Farm Bill funds. For these contracts, we totaled the amount of obligations for each fiscal year and deducted the following.

5. Adjustments within a contract. We subtracted adjustments due to changes in budget object class codes, vendor codes, etc. The agency used these adjustments to make corrections to its contracts.
6. Apportionment for FY 2002. In FY 2002, OMB apportioned \$20 million in 1996 Farm Bill funds to NRCS for WRP. We deducted any obligations using these funds because they were within the available appropriation. Any 1996 Farm Bill funds obligated in excess of this amount exceeded the appropriation level.

See exhibit C for details and summary totals for each fiscal year.

We determined that, in many cases, NRCS obligated and reobligated the same funds over the years—in effect, exceeding its 2002 Farm Bill fiscal authority multiple times with the same 1996 Farm Bill funds. Nationwide, 38 NRCS State offices incurred almost \$74 million in new obligations using funds under fund code 57 for over 1,400 WRP contracts. Table 2, column A, shows the new obligations incurred with expired 1996 Farm Bill funds.

Table 2: Summary of Expired Funds and Excess Obligations

FY	Obligations of Expired 1996 Farm Bill Funds (A)	Obligations of 2002 Farm Bill Funds (B)	Total Obligations (A) + (B) = (C)
2002 ^a	\$20,509,940	\$263,000,104	\$283,510,044
2003	\$9,984,642	\$285,181,240	\$295,165,882
2004	\$28,022,952	\$257,752,474	\$285,775,426
2005	\$7,067,912	\$240,056,639	\$247,124,551
2006	\$8,364,881	\$161,923,100	\$170,287,981
Total	\$73,950,327		
a. In FY 2002, OMB apportioned \$20 million in 1996 Farm Bill funds to NRCS for WRP. However, NRCS obligated \$40,509,940 under fund code 57, which exceeded the \$20 million by \$20,509,940.			

NRCS' Rationale for Using Funds Outside the Period of Availability

When we questioned NRCS' Chief Financial Officer (CFO) and other agency financial managers regarding the authority that allowed them to obligate 1996 Farm Bill funds beyond FY 2002 and to exceed their annual apportionment, they told us the following.³⁴

- NRCS officials first told us that OGC determined this was an acceptable practice, although OGC had no record of such a determination. NRCS officials then told us that OMB had granted a waiver, but when we inquired at OMB, officials stated they had no record of granting a waiver. NRCS officials could not provide us with documentation to support their statements.
- NRCS officials later stated that 1996 Farm Bill funds “could be moved” because both farm bills (1996 and 2002) authorized the agency to enroll a certain number of acres in WRP but did not specify the dollars that could be spent doing so. Accordingly, these officials believed they could obligate funds from one bill to another as long as the total easement acres did not exceed the authorized acreage. However, the 1996³⁵ and 2002³⁶ farm bills each clearly specified a limited period of funding availability along with the acreage cap.

³⁴ We obtained this information during several teleconferences with NRCS from September 2006 to January 2007.

³⁵ Public Law 104-127, sec. 341. (enacted Apr. 4, 1996).

³⁶ Public Law 107-171, sec. 2701 (enacted May 13, 2002).

- NRCS officials also said that 1996 Farm Bill funds were no-year funds (i.e., without fiscal year limitation), since they were apportioned to a CCC no-year U.S. Treasury symbol. However, (1) when CCC funds are apportioned to NRCS, they are subject to apportionment requirements,³⁷ (2) the 1996 Farm Bill must expressly identify the funds as no-year, which it did not,³⁸ (3) NRCS' communication identified the 1996 Farm Bill funds as not being under a no-year U.S. Treasury symbol,³⁹ and (4) NRCS' programs manual stated that "CCC funds are specific-year funds . . . this is different from annually appropriated 'no year funds'."⁴⁰

After we alerted NRCS of this potential violation of 1996 Farm Bill funds, NRCS' CFO and the national WRP manager told us that the agency would stop using 1996 Farm Bill funds to enter into new contracts in February 2007. We contacted the NRCS State offices, which confirmed that the national office instructed them via teleconference to stop using 1996 Farm Bill funds to incur new obligations.

In April 2007, NRCS also updated its WRP manual to address the use of expired 1996 Farm Bill funds, i.e., outside the period of availability, by stating that "after the end of the fiscal year in which the funds were apportioned the funds are expired and may only be used to fund within scope modifications to existing contracts that were funded in the same year as the funds were apportioned."⁴¹ However, this amendment did not explicitly retract or correct FMD Communication 04-025 regarding the availability of the 1996 Farm Bill funds. As of March 14, 2008, the agency has not formally retracted the communication.

OGC Determination

We requested an opinion from OGC as to whether NRCS violated appropriations laws, including ADA, when it re-obligated and expended funds for purposes authorized under the 2002 Farm Bill that were originally obligated for purposes authorized under the 1996 Farm Bill.

³⁷ OMB Circ. A-11, sec. 20.3 (2006).

³⁸ *Principles of Federal Appropriations Law*, 2nd ed., vol. I, ch. 5, A.2 (Jul. 1991).

³⁹ FMD Communication 04-025 (Dec. 2003).

⁴⁰ *NRCS Manual*, M.440.503.A.01 (Mar. 2001).

⁴¹ *NRCS Manual*, M.440.514.J (Apr. 2007).

On September 26, 2007, OGC provided us with its opinion stating:

We believe NRCS violated the appropriation-level prohibition of the ADA, 31 U.S.C. § 1341(a), because it violated 31 U.S.C. § 1301(a), commonly known as the Purpose Statute ... Thus, in circumstances where the Purpose Statute is violated because an appropriation is not available for a designated purpose and the agency has no other funds available for that purpose, the obligation or expenditure in question also is viewed as being in excess of the amount (zero) available for that purpose or in advance of appropriations made for that purpose, either of which constitutes a violation of 31 U.S.C. § 1341(a). Upon the expiration of the 1996 Farm Bill's WRP authority, the amount available for obligation under the 1996 Farm Bill was zero. Therefore, any amount NRCS obligated for the WRP after FY 2002 and charged to code 57 was an 'obligation exceeding an amount available in an appropriation' and will constitute an ADA violation unless it is cured through account adjustments.

In a meeting on November 2, 2007, NRCS' CFO agreed that the agency needs to cure (i.e., adjust accounts by replacing code 57 funds with code 77 funds) any obligations on contracts where it incorrectly used 1996 Farm Bill funds. NRCS officials also claimed that they had sufficient funds to cure the amounts in violation.

Although WRP funds were CCC funds, NRCS had responsibility for administering the program and obligating or deobligating the funds. Therefore, NRCS is responsible for initiating the account adjustments. Since NRCS is in the process taking action to address this problem, we intend to follow up on this issue during FY 2008 to determine whether NRCS cured the ADA violations by properly adjusting its accounts. Recommendations we determine necessary regarding NRCS' accounting controls will be made at that time. Additionally, if NRCS is not able to properly adjust its accounts to cure the ADA violation, it should follow the reporting requirements in the ADA.

Recommendation 1

Adjust the CCC WRP accounts to cure the ADA violation. Report to Congress and the President any amount that cannot be cured, as mandated by ADA.

Agency Response.

NRCS cured the ADA violation and reimbursed CCC as indicated on Form 1081 and associated attachments.

OIG Position.

We accept NRCS' management decision for this recommendation.

Recommendation 2

Retract the section in FMD Communication 04-025 regarding the availability of the 1996 Farm Bill funds and issue correct written instructions to the State offices.

Agency Response.

This action has been completed via FMD Communication 07-15. (In its attachments, NRCS provided a copy of FMD Communication 04-25, dated June 25, 2008, rescinding all information in the stated FMD Communication.)

OIG Position.

We accept NRCS' management decision for this recommendation.

Section 2 Monitoring of WRP Easements

Finding 2 NRCS Did Not Annually Monitor Most Sampled Easements

For calendar years⁴² (CY) 2003-2005, 5 of 6 NRCS State offices did not annually monitor 134 of 153 (88 percent) sampled WRP easements.⁴³ This occurred because these States were unable to monitor an increasingly large number of WRP easements on an annual basis with the resources available to them. As a result, NRCS did not detect violations on 37 of 92 (40 percent) WRP easements we visited. In one case, we found substantial dumping of hazardous debris, which destroyed about 8 acres of completed restoration. After being cited for the problem, the landowner used heavy equipment to try to cover up the debris; it took another year before the landowner properly removed the debris from the property.

NRCS policy states, “Monitoring WRP restoration sites is necessary to ensure that full wetland functions and values are achieved and maintained . . . The sites will be monitored annually [for violations].”⁴⁴ An easement violation is any unauthorized use of the site, such as encroachment, cropping, dumping trash, and drilling.

To determine if State offices were monitoring their WRP easements, we reviewed records from CYs 2003-2005 for 153 WRP easements in 6 States: Arkansas, California, Louisiana, Missouri, New York, and Florida. Table 3 lists the number of WRP easements not monitored by NRCS.

Table 3: Total WRP Easements Not Monitored During 2003-2005

State	Average No. of WRP Easements ^a	OIG Sample	No Monitoring ^b (A)	Not Monitored Each Year ^c (B)	Total (A) + (B) = (C)
Arkansas	350	31	1	26	27
California	216	25	1	23	24
Florida	57	14	0	0	0
Louisiana	550	24	11	13	24
Missouri	560	29	2	27	29
New York	1,001	30	14	16	30
Total	2,734	153	29	105	134

a. Because the number of easements increased each year, we used the average number.
b. NRCS did not annually monitor these easements at any time during the 3-year period.
c. NRCS did not annually monitor these easements 1 or 2 years during the 3-year period.

⁴² NRCS policy did not specify whether the easements should be monitored on a fiscal or calendar year basis. Consequently, some of our sample States used fiscal years; others used calendar years. For simplicity and consistency, we used calendar year in conducting our review of NRCS' monitoring.

⁴³ For simplicity, we include restoration agreements when we refer to easements since WRP sites are predominately easements.

⁴⁴ *NRCS Manual*, M.440.514.G, pt. 514.47 (f) and (g) (Oct. 2000).

To determine the effect of not monitoring the easements, we conducted site visits on 92 of our sampled 153 easements.

Violations Found During OIG Site Visits

We found violations on 37 of 92 easements we visited (40 percent). Almost all of the violations, 34 of 37, were on easements that had not been annually monitored from CYs 2003-2005.

The worst violation we found was on an easement in Arkansas that had not been monitored for more than 3 years. The easement was located near a populated area (making it a high-risk for violations such as dumping), and we found a substantial amount of hazardous debris (e.g., construction material with asbestos), which destroyed about 8 acres of restoration (see figure 2 below).

Figure 2: Hazardous Material on Arkansas Easement Site



A week after we identified the dumpsite, NRCS noticed that the landowner used heavy equipment to smooth over the easement and cover up the debris. On April 12, 2006, the Arkansas State office, in conjunction with its national office and the local OGC, sent a letter to the landowner that described eight violations and required the landowner to submit in 30 days a plan to clean up the site. On April 21, 2006, the landowner agreed to fix the problems, but a subsequent

visit by NRCS on June 4, 2006, showed that corrective action had still not been taken. As of April 19, 2007, more than a year after we identified the dumpsite, NRCS informed us that the landowner had properly removed all the debris off the easement.

Although the Arkansas site was the most egregious example of undetected noncompliance, we also observed other serious violations during our visits, such as corroded equipment, nonbiodegradable waste, hazardous construction materials, etc. (See exhibit E for a list of violations we observed.) In addition, we found a significant number of large, permanent structures such as hunting blinds—some built with concrete and rusted metal (see exhibit D for photographs of violations).⁴⁵

We discussed these violations with State and field officials and they generally responded that they would speak with the landowners about them. We also asked these officials why they did not annually monitor their easements to detect the violations. They stated that the number of new easements enrolled in the program had surged beyond their ability to monitor them. Since NRCS links employee performance to the number of new acres enrolled, States have focused on acquiring new easements, regardless of the staff resources available to monitor them.

Increasing Responsibility and Decreasing Resources

From 2000 to 2005, the 5 State offices' monitoring responsibility almost doubled—from 1,584 WRP easements to 2,971.⁴⁶ Meanwhile, these 5 States lost almost a quarter of their WRP full-time equivalents (FTE)—from 69 to 53.⁴⁷ For example, New York's easements increased from 542 to 1,132 while its FTEs decreased from 9 to 8.

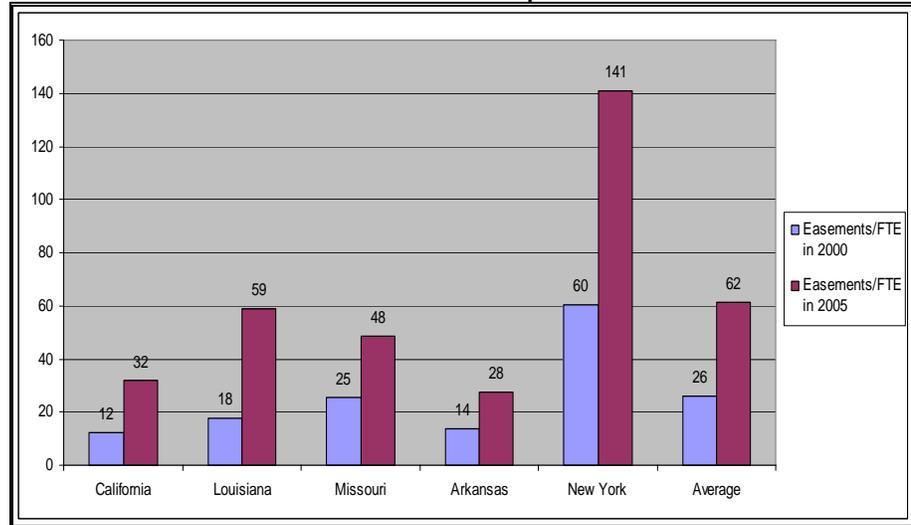
With acquired easements increasing and FTEs decreasing, NRCS State offices had fewer resources to monitor more easements. Chart 1 shows that in 5 years, on average, the number of easements per FTE more than doubled from 26 to 62.

⁴⁵ WRP conservation easement deeds prohibit "building or placing buildings or structure on the easement area."

⁴⁶ Florida averaged only 57 WRP easements and was able to annually monitor its easements. Therefore, we did not include Florida in this section.

⁴⁷ One FTE is equal to one work year or 2,080 non-overtime hours.

Chart 1: Increase of WRP Easements per FTE from 2000 to 2005



We discussed the increase of easements relative to FTEs with NRCS' national WRP manager who agreed that the States with the largest number of easements did not have sufficient resources to monitor them. Also, NRCS' national easement program director told us that to resolve this problem the agency intends to develop a better monitoring strategy, such as a risk management system. A risk-based monitoring system will enable NRCS to determine how to best target its monitoring resources as the agency acquires more easements. As NRCS develops the system, the agency should implement interim measures to address the monitoring problem.

NRCS should also correct the 37 easement violations observed during OIG's site reviews.

Recommendation 3

Create and implement a new monitoring system (e.g., a risk-based system) that will enable NRCS to more appropriately prioritize WRP easements and optimize monitoring resources.

Agency Response.

A risk-based monitoring system for WRP easements was created and is being implemented. Goal No. 2 of the Agency Conservation Easement Management Plan discusses monitoring for violations and outlines actions underway to prioritize site visits of potential violations. NRCS will be using high resolution aerial photography and trained remote sensing specialists to complement on-site monitoring activities. If NRCS identifies a potential violation or a high-risk situation, it will plan additional on-site visits. (In its response to Recommendation 4, NRCS stated that on April 22, 2008, it distributed the Agency

Conservation Easement Management Plan for immediate implementation.)

OIG Position.

We accept NRCS' management decision for this recommendation.

Recommendation 4

Implement interim measures to address the monitoring problem before the new system is implemented.

Agency Response.

On April 22, 2008, NRCS National Headquarters distributed the Agency Conservation Easement Management Plan to NRCS State offices for immediate implementation. (In its response to Recommendation 3, NRCS stated that it had developed and implemented a new monitoring system specified in the Agency Conservation Easement Management Plan.)

OIG Position.

We accept NRCS' management decision for this recommendation.

Recommendation 5

Follow up on the violations we identified and take appropriate corrective action to ensure that wetlands are properly maintained on the WRP easements.

Agency Response.

NRCS will ensure that the easement violations identified in exhibit E will be addressed by October 1, 2008.

OIG Position.

We accept NRCS' management decision for this recommendation.

Finding 3 Two NRCS State Offices Overpaid NRCS' Share of Restoration Costs for Two 30-year Easements

For two 30-year easements, the NRCS Florida and Arkansas State Offices paid more than the allowed 75 percent for restoration costs. This occurred because the State offices contracted the restoration work but did not develop procedures to deduct the landowners' share before the agency paid the contract costs. As a result, these States paid \$418,598 more than the allowable Federal share for restoration costs.

The 1996 Farm Bill states that "in the case of a 30-year easement, [NRCS shall] pay the owner an amount that is not less than 50 percent, but not more than 75 percent, of the eligible costs." Eligible costs refer to "the cost of carrying out the establishment of conservation measures and practices, and the protection of the wetland functions and values."⁴⁸ The 2002 Farm Bill did not change this provision.⁴⁹

For the 6 States in our sample, 26 of the 153 easements that we reviewed for payments were 30-year easements, which required the landowner to contribute a minimum of 25 percent for restoration costs. In two cases (8 percent), NRCS directly hired contractors to undertake restoration and paid all the costs. In both cases, the NRCS State offices (Florida and Arkansas) fully reimbursed the contractors for all of their costs, exceeding the 75-percent limit of the eligible costs allowed by law.

- Florida: Between March 2001 and September 2003, the NRCS Florida State Office paid a contractor nearly \$1.7 million (100 percent) to restore a 30-year easement. The landowner (a water district) was responsible for contributing 25 percent of the restoration costs, \$418,020. However, the State office had not established procedures to ensure landowners paid their share. After we informed the State office, it billed the landowner (excluding in-kind contributions).
- Arkansas: In November 2000 and May 2001, the NRCS Arkansas State Office paid a contractor a total of \$2,311 (100 percent) to restore a 30-year easement. The landowner was responsible for contributing 25 percent of restoration costs (\$578). As in the case in Florida, this State office also had not established procedures to ensure landowners paid their share.

⁴⁸ Public Law 104-127 (enacted Apr. 4, 1996).

⁴⁹ Public Law 107-171 (enacted May 13, 2002).

After we informed the NRCS Arkansas State Office, it agreed to recover the landowner's share of the cost.

In 2002, after the State offices entered into the contracts above, the national office revised the WRP manual to address restoration cost-share on 30-year easements. The manual states, "A landowner may elect to pay the landowner's 25 percent contribution through a deduction from the easement payment at the time of settlement when NRCS will contract for the restoration."⁵⁰ However, this statement alone does not guard against NRCS paying more than its capped share. To ensure that NRCS does not exceed the law's 75-percent cap, the agency needs to update its manual so that the landowners' 25-percent (minimum) contribution is mandatory at the time of easement settlement. NRCS can also accept in-kind contributions from landowners, such as labor and materials, instead of cash.

NRCS should require its Florida and Arkansas State Offices to collect \$418,598 from the two landowners who did not contribute their 25-percent share of the restoration costs.

Recommendation 6

Direct the NRCS Florida State Office to collect the \$418,020 cost share or provide supporting documents to substantiate in-kind contribution from the landowner.

Agency Response.

NRCS was provided supporting documentation of non-Federal expenditures for \$333,942, leaving an overpayment of \$167,563, which was collected on January 11, 2008. [Subsequent to our fieldwork, NRCS determined that the total restoration cost for the Florida easement was \$2,006,021; the landowner's 25-percent share was \$501,505. Since the landowner made an in-kind contribution of \$333,942, the landowner owed NRCS \$167,563.]

OIG Position.

We accept NRCS' management decision for this recommendation.

Recommendation 7

Direct the NRCS Arkansas State Office to collect the \$578 cost share or provide supporting documents to substantiate in-kind contribution from the landowner.

⁵⁰ *NRCS Manual*, M.440.514.E, pt. 514.35 (b) (May 2002).

Agency Response.

NRCS will collect the \$578 of the cost share payment from the landowner or verify in-kind contribution.

OIG Position.

We agree with NRCS' corrective action. To achieve management decision, the agency needs to provide us with a copy of the bill for collection and documentation that an account receivable for \$578 was established, or documentation of the landowner's in-kind contribution.

Recommendation 8

Update the WRP manual to require landowners' 25-percent (minimum) contribution at the time of easement settlement.

Agency Response.

OGC advises NRCS that it cannot legally withhold a portion of the easement payment at closing because the U.S. Government is responsible to pay just compensation as set forth in the WRP Statute. NRCS will issue National policy that will ensure that the landowner contributes a minimum of 25 percent of the cost of restoration as set forth in the statute by October 1, 2008.

OIG Position.

We accept NRCS' management decision for this recommendation.

Scope and Methodology

We conducted a nationwide review of NRCS' WRP restoration and monitoring activities. As part of our audit, we also reviewed the pertinent laws and regulations governing WRP funding and the current policies and procedures NRCS established as guidance for its monitoring of restored easements.

By the end of FY 2006, almost 1.9 million acres were enrolled in WRP through 8,872 conservation easements and 1,101 restoration agreements. By December 2005, WRP easements enrolled in the 6 sampled States accounted for 43 percent of the total acres enrolled nationwide (761,269 of 1,753,546 acres) and 37 percent of total restoration costs expended nationwide (\$119,746,593 of \$326,270,549).

We performed fieldwork at the NRCS national office in Washington, D.C.; 6 NRCS State offices; 14 NRCS field offices; and 92 wetlands easements. See exhibit B for a complete list of audit site locations. We performed audit fieldwork from January 2006 through September 2007.

We used ACL to select our samples for file review in the six States. With data imported from the national office's WRP database (dated December 30, 2005), we selected 6 States and 153 of 3,037 easements enrolled in WRP during FYs 1994-2005. Our reasons for selecting the six States were:

- **Arkansas** had the 2nd highest number of acres enrolled in WRP (11 percent) nationwide.
- **California** was our survey State because of the proximity of the State NRCS office to the OIG regional office. It ranked 5th in total acres (5 percent) and 10th in total restoration costs (4 percent) nationwide.
- **Florida** had the largest amount of restoration costs per easement nationwide, which was nearly nine times the national average.
- **Louisiana** had the highest number of acres enrolled in WRP nationwide (12 percent).
- **Missouri** had the 2nd highest number of WRP easements (7 percent) nationwide.

- **New York** had the highest number of WRP easements (13 percent) nationwide.

To accomplish our audit, we:

- Interviewed NRCS Personnel. We interviewed national, State, and field office staff at the selected States to obtain information about the monitoring and financial policy and procedures of the program.
- Reviewed Easement Files and Monitoring Records. We judgmentally reviewed 153 of 3,037 easement and restoration agreement files at the 6 sampled States to determine whether the easements had been properly monitored in CYs 2003-2005 and to review the selection process. We selected the oldest recorded easements in 19 selected counties with completed restoration. We supplemented our sample with restoration agreements if the county had fewer than 10 easements. In each of the six States, we also selected counties that had the highest number of easements, highest restoration costs, and an average restoration cost per acre ratio.
- Visited 92 Wetlands Easements. We judgmentally visited 92 wetlands easements out of the 153 selected easements and restoration agreements to determine whether the easements were in compliance with their restoration plans, WRP regulations, and policy. Generally, we selected the easements based on size, accessibility, proximity (easements that were not adjacent to one another but were still reachable within our time constraints), and a lack of monitoring.
- Reviewed Restoration Payments. We reviewed payments from 153 easements for restoration work performed on the wetlands to determine if they were accurate, allowable, and funded correctly. We also reviewed all 26 30-year easements in our sample to determine if NRCS exceeded the 75-percent Federal share for restoration costs allowed by law.
- Analyzed Obligations of the 1996 Farm Bill Funds. We obtained nationwide obligation data as of September 30, 2006, for the 1996 Farm Bill funds covering October 1, 2000, through September 30, 2006.⁵¹ We used ACL to calculate the amount of 1996 Farm Bill funds incurred for new obligations during each of FYs 2002-2006 by totaling all contracts with a

⁵¹ NRCS' FMD electronically provided us with its nationwide obligation data.

net increase in obligations under fund code 57 for the respective period (see exhibit C for details).

- Reviewed Oversight and Evaluation Reports. We obtained Oversight and Evaluation reports and reviewed them to determine if management action plans had been developed and followed.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Exhibit A – Summary of Monetary Results

FINDING NUMBER	RECOMMENDATION NUMBER	DESCRIPTION	AMOUNT	CATEGORY
1	1	NRCS incurred new obligations during the 2002 Farm Bill period with expired funds from the 1996 Farm Bill ^a	\$73,950,327	FBPTBU-Improper Accounting
3	6	NRCS Florida State Office did not recover a landowner's share of the restoration cost.	\$418,020	Questioned Costs – Recovery Recommended
3	7	NRCS Arkansas State Office did not recover a landowner's share of the restoration cost.	\$578	Questioned Costs – Recovery Recommended
TOTAL MONETARY RESULTS			\$74,368,925	
<p>a. By using expired funds in this manner, NRCS currently is in violation of the ADA but may cure the violation through account adjustments, which it has agreed to do.</p>				

Exhibit B – Audit Sites Visited

ORGANIZATION	LOCATION
<p>NRCS National Office Easement Program Division Financial Management Division Operations Management & Oversight Division</p>	<p>Washington, D.C. Washington, D.C. Washington, D.C.</p>
<p>NRCS Arkansas Offices Arkansas State Office Helena Service Center Lake Village Service Center Searcy Service Center Five WRP Easements Five WRP Easements Six WRP Easements</p>	<p>Little Rock, AR Helena, AR Lake Village, AR Searcy, Arkansas Chicot County, AR Phillips County, AR White County, AR</p>
<p>NRCS California Offices California State Office Colusa Service Center Tulelake Basin Project Office Woodland Service Center Six WRP Easements Three WRP Easements Six WRP Easements</p>	<p>Davis, CA Colusa, CA Tulelake, CA Woodland, CA Colusa County, CA Siskiyou County, CA Yolo County, CA</p>
<p>NRCS Florida Offices Florida State Office Three WRP Easements One WRP Easement Two WRP Easements Eight WRP Easements</p>	<p>Gainesville, FL Brevard County, FL Collier County, FL Hendry County, FL Orange County, FL</p>

Exhibit B – Audit Sites Visited

Exhibit B – Page 2 of 2

ORGANIZATION	LOCATION
<p>NRCS Louisiana Offices Louisiana State Office New Roads Service Center St. Joseph Service Center Tallulah Service Center Five WRP Easements Four WRP Easements Five WRP Easements</p>	<p>Alexandria, LA New Roads, LA St. Joseph, LA Tallulah, LA Madison Parish, LA Pointe Coupee Parish, LA Tensas Parish, LA</p>
<p>NRCS Missouri Offices Missouri State Office Wetland Emphasis Team 1 Office Wetland Emphasis Team 3 Office Five WRP Easements Five WRP Easements Six WRP Easements</p>	<p>Columbia, MO Chillicothe, MO Warrensburg, MO Chariton County, MO Linn County, MO Vernon County, MO</p>
<p>NRCS New York Offices New York State Office Batavia Service Center Canton Service Center Hamilton Service Center Five WRP Easements Seven WRP Easements Five WRP Easements</p>	<p>Syracuse, NY Batavia, NY Canton, NY Hamilton, NY Genesee County, NY Madison County, NY St. Lawrence County, NY</p>

Exhibit C – Analysis on the Use of 1996 Farm Bill Funds to Incur New Obligations During the 2002 Farm Bill Period

To identify the contracts with new obligations using 1996 Farm Bill funds:

CONTRACTS	FY				
	2002	2003	2004	2005	2006
Total Transactions	18,394	9,120	5,631	4,850	2,842
Less: Payments ^a	(7,397)	(3,571)	(1,876)	(1,467)	(905)
Less: Transactions within the Same Contract ^b	<u>(7,235)</u>	<u>(3,237)</u>	<u>(1,871)</u>	<u>(1,728)</u>	<u>(948)</u>
Contracts with Obligations/Deobligations	3,762	2,312	1,884	1,655	989
Less: Contracts with Net Deobligations ^c	(806)	(655)	(859)	(864)	(469)
Less: Contracts with No Obligation Balance ^d	<u>(1,158)</u>	(963)	<u>(533)</u>	<u>(473)</u>	<u>(281)</u>
Contracts with New Obligations ^e	1,798 =====	694 =====	492 =====	318 =====	239 =====

- a. NRCS obligated expired funds to purchase new easements or restore wetlands. Because the funds were expired, we identified the obligations as violations. When the agency made payments against those obligations using expired funds, we excluded the payments to avoid counting the same violations twice.
- b. Each contract had multiple obligation and deobligation transactions. To identify the number of contracts that used expired funds in each fiscal year, we netted the transactions for each contract and counted the contract once.
- c. For each fiscal year, we excluded contracts where deobligations exceeded obligations because deobligations are not violations of ADA.
- d. For each fiscal year, we excluded contracts with a zero balance because expired funds obligated to these contracts were deobligated entirely during the same fiscal year.
- e. Between FYs 2003-2006, NRCS entered into 1,408 contracts using 1996 Farm Bill funds. This does not reconcile to the 1,743 contracts with new obligations for these years because, in numerous cases, NRCS incurred new obligations on the same contracts over multiple years. For FY 2002, the 1996 and 2002 Farm Bills overlapped, which allowed \$20 million in 1996 Farm Bill funds to be used in FY 2002. Since NRCS obligated and deobligated funds on contracts through the year, we could not determine which contracts of the 1,798 used expired funds and which did not. However, we were able to determine the amount of obligations with expired funds in FY 2002 because any obligations in excess of the \$20 million were not appropriated by the 1996 Farm Bill.

To calculate the amount of obligations using expired 1996 Farm Bill funds for the contracts with new obligations identified above:

OBLIGATIONS	FY				
	2002	2003	2004	2005	2006
Total New Obligations ^f	\$43,609,541	\$10,775,032	\$28,985,463	\$7,911,836	\$9,136,780
Less: Adjustments Within a Contract ^g	<u>(\$3,099,601)</u>	<u>(\$790,390)</u>	<u>(\$962,511)</u>	<u>(\$843,924)</u>	<u>(\$771,899)</u>
Net New Obligations	\$40,509,940	\$9,984,642	\$28,022,952	\$7,067,912	\$8,364,881
Less: Apportionment ^h	<u>(\$20,000,000)</u>	<u>(\$0)</u>	<u>(\$0)</u>	<u>(\$0)</u>	<u>(\$0)</u>
Obligation of Expired 1996 Farm Bill Funds	\$20,509,940 =====	\$9,984,642 =====	\$28,022,952 =====	\$7,067,912 =====	\$8,364,881 =====

- f. These amounts were totaled from the data provided by NRCS.
- g. These adjustments were corrections due to changes in budget object class codes, vendor codes, etc.
- h. In FY 2002, OMB apportioned \$20 million in 1996 Farm Bill funds to NRCS for WRP.

Exhibit D – Photographs of Violations Observed During Site Reviews



Arkansas - Dumped Furniture and Trash



Missouri - Rusty Pipes



Louisiana - Permanent Deer Blind on Abandoned Oil Tank

Exhibit D – Photographs of Violations Observed During Site Reviews



Arkansas - Permanent Duck Blind



Louisiana - Partially Sunk, Abandoned Boat



Arkansas - Abandoned Fuel Tank

Exhibit D – Photographs of Violations Observed During Site Reviews



Arkansas - Permanent Deer Blind



Missouri - Permanent Pier



Arkansas - Dumped Concrete Building Debris

Exhibit E – List of Violations Observed During Site Reviews

Exhibit E – Page 1 of 1

NO.	STATE	CONTRACT NO.	VIOLATIONS
1	AR	66-7103-5-0061	Permanent structure, trash, compatible use without active permit ^a
2	AR	66-7103-6-0117	Permanent structure, equipment stored on easement site, compatible use without active permit
3	AR	66-7103-5-0060	Permanent structure, compatible use without active permit
4	AR	66-7103-5-0063	Permanent structure
5	AR	66-7103-0-0280	Dumping
6	AR	66-7103-5-0094	Permanent structure, compatible use without active permit
7	AR	66-7103-5-0093	Permanent structure, compatible use without active permit
8	AR	66-7103-5-0089	Permanent structure, compatible use without active permit
9	AR	66-7103-5-0091	Permanent structure, trash
10	AR	66-7103-2-0344	Permanent structure
11	AR	66-7103-0-0292	Permanent structure, compatible use without active permit
12	AR	66-7103-5-0006	Permanent structure, trash, compatible use without active permit
13	AR	66-7103-7-0207	Equipment stored on easement site, excessive mowing
14	CA	66-9104-8-66	Permanent structure
15	CA	66-9104-0-123	Permanent structure
16	CA	66-9104-6-15	Trash
17	LA	66-7217-5-3050	Permanent structure
18	LA	66-7217-5-3049	Permanent structure, compatible use without active permit
19	LA	66-7217-5-3064	Permanent structure
20	LA	66-7217-4-0121	Trash
21	LA	66-7217-6-3142	Permanent structure
22	LA	66-7217-5-3075	Permanent structure
23	MO	66-6424-5-020	Permanent structure
24	MO	66-6424-6-226	Permanent structure
25	MO	66-6424-8-8454	Permanent structure
26	MO	66-6424-8-8470	Permanent structure
27	MO	66-6424-6-165	Permanent structure, trash
28	MO	66-6424-6-172	Permanent structure
29	MO	66-6424-6-202	Permanent structure
30	MO	66-6424-7-7333	Trash
31	MO	66-6424-8-8429	Trash
32	NY	66-2C31-7-00505	Permanent structure, equipment stored on easement site
33	NY	66-2C31-7-00537	Permanent structure
34	NY	66-2C31-7-00108	Excessive mowing ^b
35	NY	66-2C31-8-00557	Mowing encroachment
36	NY	66-2C31-8-00598	Permanent structure

a. Compatible uses are activities that further the long-term protection and enhancement of the wetland, such as hunting, timber harvest, grazing, and wildlife food plots. However, the landowner must obtain written authorizations (compatible-use permits) from NRCS for such activities.

b. NRCS has the right to prohibit all mowing (cutting grass), unless it determines such mowing will enhance the wetland. Even so, mowing has to be scheduled and conducted with limitation.

United States Department of Agriculture



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

AUG 05 2008

SUBJECT: BDG - Natural Resources Conservation Service (NRCS) Response to the Office of the Inspector General (OIG) Audit Report 10099-4-SF, Wetlands Reserve Program (WRP), Wetland Restoration and Compliance

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

Attached are NRCS' responses to OIG recommendations contained in Audit Report 10099-4-SF, WRP, Wetland Restoration and Compliance.

NRCS completed actions for Recommendations 1, 2, 3, 4, and 6, and requests that these actions be considered completed for the purposes of this audit.

Noted in the response are the planned time for completing Recommendations 5, 7, and 8.

If you have questions or need additional information, please contact Denise Decker, Acting Compliance Team Leader, (202) 690-0648.

A handwritten signature in black ink, appearing to read "Arlen L. Lancaster".

Arlen L. Lancaster
Chief

Attachments

cc:

Leonard Jordan, Deputy Chief for Strategic Planning and Accountability, NRCS,
Washington, D.C.
Diane E. Gelburd, Director, Operations Management and Oversight Division, NRCS,
Washington, D.C.
Denise Decker, Acting Compliance Team Leader, Operations Management and Oversight
Division, NRCS, Washington, D.C.

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Natural Resources Conservation Service (NRCS) responses to Office of Inspector General (OIG) audit USDA/OIG-A/10099-4-F Wetland Reserve Program (WRP) Wetland Restoration and Compliance

Finding 1: NRCS incurred new obligations during the 2002 Farm Bill period with the expired funds from the 1996 Farm Bill.

OIG Recommendation 1: Adjust the CCC WRP accounts to cure the ADA violation. Report to Congress and the President any amount that cannot be cured, as mandated by ADA.

Agency Response to Recommendation 1: NRCS has cured the ADA violation and has reimbursed CCC as indicated on Form 1081 and associated attachments (Attachment 1).

OIG Recommendation 2: Retract the section in FMD communication 04-025 regarding the availability of the 1996 Farm Bill funds and issue correct written instructions to the State offices.

Agency Response to Recommendation 2: This action has been completed via FMD communication 07-15 (Attachment 2).

Finding 2: NRCS did not annually monitor most sampled easements

OIG Recommendation 3: Create and implement a new monitoring system (e.g., a risk based system) that will enable NRCS to more appropriately prioritize WRP easements and optimize monitoring resources.

Agency Response to Recommendation 3: A risk-based monitoring system for WRP easements has been created and is being implemented. The Agency Conservation Easement Management Plan (Attachment 3) outlines actions underway to prioritize site visits of potential violations.

NRCS will be utilizing high resolution aerial photography and trained remote sensing specialist to complement on-site monitoring activities. High resolution aerial photography of 3,207 easements is currently being processed. An additional 4,513 easements which includes re-flights of the original easements, are contracted for photography in spring and summer of 2008. A total of 7,720 WRP easements will be completed in 2008. Digitization of the remaining easements and any new easements will be completed by August 2008 so all WRP easements will have aerial photographs in 2009. NRCS plans to obtain high resolution aerial photography of all WRP easements annually.

OIG Recommendation 4: Implement interim measures to address the monitoring problem before the new system is implemented:

Agency Response to Recommendation 4: On April 22, 2008, NRCS National Headquarters distributed the Agency Conservation Easement Management Plan (Attachment 3) to NRCS State Offices for immediate implementation.

OIG Recommendation 5: Follow-up on the violations we identified and take appropriate action to ensure that wetlands are properly maintained on all easements.

Agency Response to Recommendation 5: NRCS will ensure that the easement violations identified in Exhibit E will be addressed by October 1, 2008.

Finding 3: Two NRCS State offices overpaid NRCS's share of restoration costs for two 30-year easements.

OIG Recommendation 6: Direct the NRCS Florida State Office to collect the \$418,020 cost share or provide supporting documentation to substantiate in-kind contribution from the landowner.

Agency Response to Recommendation 6: NRCS has been provided supporting documentation of non federal expenditures for \$333,941.61 leaving an overpayment of \$167,563.52 which was collected 01/11/2008 (Attachment 4).

OIG Recommendation 7: Direct the NRCS Arkansas State Office to collect the \$578.00 cost share or provide supporting documentation to substantiate in-kind contribution from the landowner.

Agency Response to Recommendation 7: NRCS will collect the \$578 of cost share payment from the landowner or verify in kind contribution by August 1, 2008.

OIG Recommendation 8: Update WRP manual to require landowners' 25-percent (minimum) contribution at the time of easement settlement.

Agency Response to Recommendation 8: Office of General Counsel advises NRCS that it cannot legally withhold a portion of the easement payment at closing because the US government is responsible to pay just compensation as set forth in the WRP Statute. NRCS will issue National policy that will ensure that the landowner contributes to a minimum of 25% of the cost of restoration as set forth in the Statute by October 1, 2008.

Informational copies of this report have been distributed to:

Office of the Chief Financial Officer
 Director, Planning and Accountability Division (1)
Government Accountability Office (1)
Office of Management and Budget (1)