

## **Part 528 – Agricultural Conservation Easement Program (ACEP)**

### **Subpart Q – ACEP-WRE Special Enrollment Options**

#### **528.160 Overview**

This subpart provides implementation guidance for the Wetland Reserve Enhancement Partnership (WREP) enrollment option and the Reservation of Grazing Rights enrollment option under the Wetland Reserve Easement component of ACEP (ACEP-WRE).

#### **528.161 Wetland Reserve Enhancement Partnership (WREP) Enrollment**

##### **A. General**

- (1) WREP enrollment is a part of the ACEP-WRE and is administered by NRCS, with advice from the State technical committee and other cooperating agencies and organizations, including the U.S. Fish and Wildlife Service (FWS).
- (2) Easements and 30-year contracts enrolled through the WREP process have the same requirements as standard ACEP-WRE. Wetland restoration and enhancement actions must maximize wetland functions and values, including wildlife habitat in accordance with the ACEP regulation, 7 CFR Part 1468, and NRCS standards and specifications. Proposals related to easement management must conform to the ACEP-WRE guidelines for managing lands subject to an ACEP-WRE easement. Funds for WREP proposals are derived from funds available for ACEP.
- (3) The Chief may enter into agreements with States (including a political subdivision or agency of a State), nongovernmental agencies, or Indian Tribes to carry out WREP partnership agreements.
- (4) Partners are required to provide matching funds. In general, contributions provided by the partners may be in-kind services or cash and may be used for technical or financial assistance activities related to the acquisition or restoration of new enrollments or enhancement, management, or monitoring of existing enrollments. The specific requirements for level, type, and use of matching funds is provided in the specific announcement for WREP proposals.
- (5) Benefits to the partners in WREP agreements include—
  - (i) Involvement in wetland protection, restoration, and enhancement in high-priority areas.
  - (ii) Opportunity to use innovative restoration methods and practices.
  - (iii) Opportunity to leverage funding to benefit critical resource concerns.
  - (iv) Opportunity to target outreach and enrollment based on priorities identified by partners and supported by NRCS.
  - (v) Ability to maximize wetland functions and values, including habitat benefits and water quality on new and existing enrollments.

##### **B. Program Purpose and Objectives**

The purpose of WREP enrollment is to target and leverage resources to address high-priority wetland protection, restoration, and enhancement objectives through agreements with States (including a political subdivision or agency of a State), nongovernmental organizations, and Indian Tribes (7 CFR Section 1468.35). Under WREP enrollment, State conservationists enter into agreements with eligible partners. Additionally, NRCS

may use WREP enrollment to obtain assistance with easement management activities from those who have the appropriate expertise, as determined by the Chief of NRCS.

C. NRCS Responsibilities.—The responsibilities for WREP are the same as the regular ACEP-WRE with the following exceptions:

- (1) National Headquarters (NHQ).—In addition to ACEP-WRE responsibilities, national leadership for WREP enrollment is provided by the Chief and the Chief's designee. The Chief will—
  - (i) Determine the funding level for WREP proposals on a periodic basis and will notify State conservationists about—
    - The level of funding available for WREP proposals in that fiscal year.
    - The priorities for funding.
    - Required level of partner matching funds.
    - Ranking criteria.
    - Additional criteria, as determined by the Chief.
  - (ii) Select proposals for funding.
  - (iii) Work with State conservationists and partners to develop guidelines and agreements for implementing selected proposals.
- (2) State Offices.—In addition to ACEP-WRE responsibilities, State leadership for WREP enrollment is provided by the State conservationist. The State conservationist will—
  - (i) Upon notice by NHQ, announce availability for submission of WREP project proposals.
  - (ii) Develop WREP partnership project proposals with eligible partners in their State.
  - (iii) Coordinate with neighboring States on proposals that include more than one State, including designation of a lead State for the proposal.
  - (iv) Submit project proposals to NHQ when project proposals are requested.
- (3) Once a proposal has been selected by the Chief for funding, the State conservationist will—
  - Publish a signup announcement to make information regarding availability of WREP funding to the private and Tribal landowners in the selected proposal areas.
  - Work with partners to develop a partnership agreement and ensure that it is consistent with the announcement of funding, the proposal, and ACEP regulations and policy.
  - Ensure all program eligibility criteria and policies are met for all applications and enrollments that may result.
- (4) Field Offices and ACEP-WRE Teams

Field offices and ACEP-WRE teams will assist partners with implementing the partnership agreement to the extent specified in the agreement.

#### D. Partner Responsibilities

Partner responsibilities include—

- (i) Developing a partnership agreement and ensuring that it is consistent with the announcement of funding, the proposal, and applicable ACEP regulations and policy.
- (ii) Performing activities as outlined in the agreement.
- (iii) Ensuring availability of resources to be contributed to WREP projects, including all matching funds.

- (iv) Providing outreach to potential participants.

## **528.162 Reservation of Grazing Rights Option**

### **A. General**

- (1) The reservation of grazing rights is a separate enrollment option available under the ACEP-WRE component. As a component of ACEP-WRE, NRCS implements a reservation of grazing rights enrollment option wherein the landowner may reserve grazing rights on the lands subject to the easement or 30-year contract. This option is only available for unique wetland ecosystems where grazing is the appropriate vegetation management or disturbance activity tool needed to maintain the long-term viability of the unique attributes of that particular wetland ecosystem. Grazing is the only additional right that may be reserved to the landowner and the extent of the reserved grazing right is identified in Form NRCS-LTP-33, “Warranty Easement Deed with Reservation of Grazing Rights,” and is further described in the exhibit E to the deed and the grazing management plan that will be a component of the wetland reserve plan of operations (WRPO).
- (2) A State conservationist, in consultation with the State technical committee, may consider offering the reservation of grazing rights enrollment option within their State. If enrollment will be offered, the State conservationist must identify the unique wetland ecosystems and designate the geographic area in which those unique wetland ecosystems exist that will be included in the enrollment area. Additionally, the reservation of grazing rights enrollment option may only be offered where the State conservationist determines that the reservation and use of grazing rights—
  - (i) Are compatible with the land subject to the easement or 30-year contract.
  - (ii) Are necessary for the restoration and management of the land subject to the easement or 30-year contract.
  - (iii) Are consistent with the long-term wetland protection and enhancement goals for which the easement or 30-year contract was established.
  - (iv) Comply with a WRPO grazing management plan developed by NRCS in consultation with FWS at the local level that outlines the location, timing, intensity, frequency, and duration of the grazing.
  - (v) Supports the habitat needs of the target species, including plant height, structure and spatial considerations for nesting, food, cover, or brood-rearing habitat.
- (3) States should document in the State-specific wetland restoration criteria and guidelines (WRCG) any geographic areas designated for potential reservation of grazing rights enrollments, including a description of the attributes of the wetland ecosystems in those geographic areas, the relationship of grazing to the maintenance of the functions and values of such ecosystems, and any other considerations or parameters applicable to enrollments with a reservation of grazing rights.
- (4) Lands where woody vegetation was a dominant part of the historic plant community are not eligible for the reserved rights enrollment option unless a waiver is granted by the national ACEP-WRE manager. Examples include woody riparian, bottomland hardwoods, or other forested wetland systems.
- (5) Using the template Exhibit E provided, States must draft the contents of the Exhibit E that will be used for the identified wetland ecosystems within each of the geographic areas that the reservation of grazing rights enrollment option will be offered. States must submit the draft Exhibit E to Easement Programs Division (EPD) for review and must receive written approval from EPD to use the Exhibit E before announcing the availability of the reservation of grazing rights enrollment option in the State and

selecting applications for funding. (See subpart U of this part for the template “Exhibit E for the Reservation of Grazing Rights.”)

- (6) Under the reservation of grazing rights enrollment option, NRCS works directly with landowners. Landowners submit applications directly to NRCS once a reservation of grazing rights enrollment area has been designated. Landowners applying for this enrollment option in a designated reserved rights area must meet the eligibility requirements in subpart K, sections 528.103 and 528.104 of this part. Lands that are enrolled under this option must meet the ACEP-WRE eligibility requirements in subpart K, sections 528.105 and 528.106 of this part.
- (7) Easements and 30-year contracts entered into through the reserved rights enrollment process have the same enrollment, acquisition, planning, restoration, management, monitoring, and maintenance requirements as standard ACEP-WRE. Wetland restoration and enhancement actions must maximize wetland functions and values, including wildlife habitat in accordance with the ACEP regulation (7 CFR Part 1468), ACEP policy, and NRCS standards and specifications.
- (8) The landowner must acknowledge acceptance of the terms and conditions of the grazing right by executing the deed or 30-year contract with the “Reservation of Grazing Rights, “Exhibit E” attached and by signing the WRPO grazing management plan prior to easement closing or 30-year contract execution by NRCS.
- (9) Monitoring of the grazing effects on the habitat objectives determines if adjustments to the grazing management plan are necessary. At least every 5 years, the grazing management plan must be reviewed and updated as necessary. Additional grazing, as determined by NRCS based on site conditions, may only be provided through an approved compatible use authorization.

#### B. Compensation

Compensation for easements or 30-year contracts entered into under the reservation of grazing rights enrollment option is based on the methods and the resultant values determined in accordance with guidance in this part (see subparts K, M, and O of this part), except that the geographic area rate cap (GARC) that would be applicable to the corresponding enrollment type (permanent easement, less-than-permanent easement, 30-year contract) under conventional ACEP-WRE is reduced by an amount representative of the value of the retained grazing rights, as determined by the Chief.

#### C. Authorized Funding Levels

- (1) NRCS may provide assistance for establishing or implementing practices, measures, or activities specified in the final WRPO. These practices and components must be necessary to achieve the desired wetland functions and values and may be provided at the conventional ACEP-WRE rate (up to 100 percent for permanent easements and up to 75 percent for less-than-permanent enrollments).
- (2) Financial assistance is authorized for necessary wildlife-friendly fences detailed in the final WRPO grazing management plan. Additionally, financial assistance is authorized to modify existing fences to wildlife-friendly specifications. Livestock watering facilities as part of the final WRPO grazing management plan may be authorized for financial assistance subject to written authorization from the EPD director, see subpart N, section 528.133E of this part.
- (3) No special funds will be allocated for this enrollment option of ACEP-WRE. Applications will be funded from the State’s annual ACEP-WRE allocation. Up to 50 percent of the State’s annual allocation may be used for this enrollment option. Enrollment obligations in excess of 50 percent of the State’s annual allocation must be approved by the Deputy Chief for Programs.

D. NRCS Responsibilities

NRCS responsibilities for the reserved rights enrollment option are the same as regular ACEP-WRE with the following additions:

- (i) NHQ.—In addition to ACEP-WRE responsibilities, national leadership for the reserved rights enrollment option is provided by the Chief and the Chief's designee. The Chief will—
- Determine the reduction in the easement compensation value for the reserved grazing rights.
  - Develop guidelines for appropriate use of the reservation of grazing rights enrollment option.
  - Make available Form NRCS-LTP-33, "Warranty Easement Deed with Reservation of Grazing Rights," template and a template exhibit E.
  - Review and approve the exhibit E version that will be used in each grazing reserved rights enrollment area.

(ii) Regional Conservationists

In addition to ACEP-WRE responsibilities, regional conservationists (RCs) provide leadership to the States regarding implementation of the reserved rights enrollment option.

- (iii) State Offices.—In addition to ACEP-WRE responsibilities, State leadership for the reserved rights enrollment option is provided by the State conservationist. The State conservationist will—
- Determine if and where the reservation of grazing rights enrollment option will be offered in that State and the level of funding available.
  - Work with the State technical committee to provide recommendations on unique wetland ecosystems appropriate for inclusion in this enrollment option, including the types of grazing management conditions that contribute to the wetland functions and values of the unique wetland ecosystem.
  - Complete exhibit E to the Form NRCS-LTP-33 for each area selected based upon the template version provided by NHQ and submit the exhibit E to EPD for review and approval.
  - Document the designated geographic areas and wetland ecosystems determined appropriate for this enrollment option (e.g., in the State-specific WRCG document).
  - Develop as needed specific ranking criteria or ranking pools for the evaluation and prioritization of the wetland ecosystems in the designated geographic areas with EPD-approved Exhibit Es where the reservation of grazing rights enrollment option is being made available.
  - Provide notice of the availability of the reserved rights enrollment option within the designated area and the specific requirements for participation, including making a copy of Form NRCS-LTP-33 available to interested applicants.
  - Review and approve the WRPO grazing management plan and any updates thereto. The State conservationist may delegate this authority to the State ACEP-WRE manager or coordinator.
  - Develop guidelines for the development of grazing management plans that will be incorporated into the WRPO, including the review and updating of such plans at least every 5 years as needed.

- Ensure appropriate implementation of the reservation of grazing rights enrollment option. This option is only offered where grazing is necessary to achieve the desired wetland functions and values of the unique wetland ecosystem on the ACEP-WRE easement or 30-year contract area as described in this subpart.
  - Certify, by signing the ACEP-WRE easement or contract, that the reservation of the grazing right is compatible with the land subject to the easement or 30-year contract.
  - Assess grazing impacts to determine if additional grazing beyond what is allowed under the Exhibit E and the grazing management plan is appropriate, as determined by NRCS based on site conditions, and if so, follow the compatible use authorization process (see subpart P of this part).
- (iv) Field Offices and ACEP-WRE Teams.—In addition to ACEP-WRE responsibilities, responsibilities of the designated conservationists or local NRCS representative, as determined by the State conservationist, are to—
- Coordinate with FWS, State wildlife agency, conservation district, and other appropriate agencies, organizations, or cooperating partners to conduct outreach and implement the reservation of grazing rights enrollment option.
  - Determine site eligibility based on appropriate ecological conditions and plant communities historically represented within the proposed easement or contract area.
  - Develop the WRPO grazing management plan. The terms and conditions of the grazing management plan must be based upon guidance provided by the State office and developed in consultation with FWS and other partners as appropriate and be compatible with the wetland functions and values, including habitat and species goals and objectives.
  - Develop WRPO modifications, including updates to the grazing management plan, as necessary, for State office approval. (See subpart O of this manual for guidance on WRPO and contract modifications.)
  - Conduct onsite annual monitoring for the first 3 years of the easement or contract. Due to the nature of the enrollment option, onsite monitoring is necessary to fully gauge the habitat response to the prescribed grazing regime. Monitoring is performed at critical times to measure the success in attaining the identified wetland functions and values, including habitat and species goals and objectives.

### C. FWS Responsibilities

FWS is an integral partner to NRCS on the implementation of the reserved rights enrollment option. In addition to ACEP-WRE responsibilities, NRCS includes FWS in the following:

- (i) Assisting NRCS with appropriate ecological site determinations for the reserved rights enrollment option
- (ii) Assisting NRCS with the WRPO grazing management plan prescription necessary to achieve the desired wetland functions and values and vegetative structure for which the easement is being established
- (iii) Providing recommendations to NRCS regarding the location, timing, intensity, frequency, and duration of the grazing activity
- (iv) Providing outreach to potential participants