



United States Department of Agriculture
Office of Inspector General





Recovery Act – NRCS' Emergency Watershed Protection Program Floodplain Easements Field Confirmations

Audit Report 10703-0005-KC

What Were OIG's

Objectives

Our objectives were to assess NRCS' determined value for acquired easements, its methodology for selecting and acquiring easements, and whether participants and land met eligibility guidelines.

What OIG Reviewed

OIG performed reviews of floodplain easement project files and conducted site visits to evaluate a random sample of 78 projects, totaling approximately \$27.4 million, spread across 9 States.

What OIG Recommends

We recommend that NRCS develop its policies to define the "natural conditions" to which it restores easements, and to improve documentary support related to easement restorations, eligibility determinations, and the selection process. NRCS also needs to improve guidance to landowners defining actions prohibited on easements. Finally, NRCS should improve controls over program obligations and take action to address \$139,474 in payment errors.

OIG evaluated NRCS' floodplain easement program activities to assess the agency's use of Recovery Act funds to restore and enhance floodplains.

What OIG Found

The Office of Inspector General (OIG) determined that the Natural Resources Conservation Service (NRCS), an agency within the Department of Agriculture (USDA), needs to address four issues related to the floodplain easement component of its Emergency Watershed Protection Program. We found that NRCS did not always: target funds to those easements most consistent with program goals, require that documentation supported eligibility determinations, ensure easements were maintained consistent with program goals, and compensate landowners appropriately.

NRCS acquires easements from owners of floodplain lands to gain authority to take measures to restore and enhance the floodplain's function and values. Without a clear definition of "natural conditions" in the program manual, however, personnel did not always develop restoration plans adequately and ensure the restoration of floodplain functions and values to the greatest extent practicable. Further, NRCS did not always develop and maintain documents to support its determinations that offered lands were eligible and its decisions to prioritize among applications. Additionally, NRCS did not provide adequate guidance to landowners regarding program rules, such as actions prohibited on easements; as a result, land was not always maintained in a manner consistent with the program goal of restoring floodplains to a natural condition. Finally, NRCS compensated five landowners in our sample improperly, with errors totaling \$139,474. OIG accepted management decision on six of the seven recommendations; however, further action from the agency is needed before management decision can be reached on the other recommendation.



United States Department of Agriculture
Office of Inspector General
Washington, D.C. 20250



DATE: March 14, 2013

AUDIT
NUMBER: 10703-0005-KC

TO: Jason Weller
Acting Chief
Natural Resources Conservation Service

ATTN: Lesia Reed
Deputy Chief
Strategic Planning and Accountability

FROM: Gil H. Harden
Assistant Inspector General for Audit

SUBJECT: Recovery Act – Emergency Watershed Protection Program Floodplain
Easements, Field Confirmations

This report presents the results of the subject audit. Your written response, dated January 16, 2013, to the official draft report is included, in its entirety, at the end of this report. Excerpts from your response and the Office of Inspector General's position are incorporated into the relevant sections of the report.

We accept management decisions for Recommendations 1 through 5 and 7. However, we are unable to accept management decision on Recommendation 6. Documentation and/or action needed to reach management decision on this recommendation is described in the relevant OIG Position section of the report.

In accordance with Departmental Regulation 1720-1, please furnish a reply within 60 days describing the corrective actions taken or planned, and timeframe for implementing the recommendation for which management decision has not been reached. Please note that the regulation requires management decision to be reached on all recommendations within 6 months from report issuance, and final action to be taken within 1 year of each management decision to prevent being listed in the Department's annual Agency Financial Report. Please follow your internal agency procedures in forwarding final action correspondence to the Office of the Chief Financial Officer.

We appreciate the courtesies and cooperation extended to us by members of your staff during our audit fieldwork and subsequent discussions.

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Background and Objectives

Background

The Natural Resources Conservation Service (NRCS) is the primary Federal agency that works with private landowners to help them conserve, maintain, and improve their natural resources.¹ In the interest of conservation and safety, NRCS operates the Emergency Watershed Protection Program (EWPP).² Through the program's floodplain easement component, NRCS purchases rights to property in floodplains from landowners to gain authority to take measures to restore, protect, maintain, and enhance the functions of the floodplain; conserve natural values, including fish and wildlife habitat, water quality, floodwater retention, groundwater recharge, and open space; reduce long-term Federal disaster assistance; and safeguard lives and property from floods, drought, and the products of erosion.³ Landowners who sell easements to NRCS voluntarily agree to transfer certain authorities over the land to the Government in exchange for compensation.

The *American Recovery and Reinvestment Act of 2009* (Recovery Act) provided \$145 million to NRCS for necessary expenses to purchase and restore such easements.⁴ On February 18, 2009, the Office of Management and Budget (OMB) issued initial guidance to establish and clarify the required steps Federal agencies must take to meet the accountability objectives of the Recovery Act.⁵ A national sign-up period, during which NRCS accepted applications, began on March 9, 2009, and was extended to April 10, 2009.

Land Eligibility

To be eligible for the easement program, at least 65 percent of a landowner's proposed acreage for enrollment must be located within an authorized watershed. The land must be owned privately or by State or local units of government, and must be: (1) land damaged by flooding at least twice within the previous 10 years, or at least once in the last 12 months, or (2) land that would be inundated or adversely impacted as a result of a dam breach.

¹ The Secretary of Agriculture is authorized to undertake emergency measures, including the purchase of floodplain easements, for runoff retardation and soil erosion prevention, in cooperation with landowners and land users, as the Secretary deems necessary, to safeguard lives and property from floods, drought, and the products of erosion on any watershed whenever fire, flood, or any other natural occurrence is causing or has caused sudden impairment of that watershed. Public Law (P.L.) 81-516, section 216 (as amended).

² *Watershed Protection and Flood Prevention Act of 1954*, P.L. 83-566.

³ The *Federal Agriculture Improvement and Reform Act of 1996* amended the Emergency Watershed Protection Program to allow NRCS to provide for the purchase of floodplain easements as an emergency measure. P.L. 104-127, section 382.

⁴ P.L. 111-5, February 17, 2009.

⁵ OMB M-09-10, February 18, 2009.

Floodplain Easement Selection and Acquisition Process

NRCS State offices were to rank all applications and enter them into a database by April 17, 2009. Then, each State office was to send its ranking list, a project showcase for each application that it expected to fund, and photographs of a selection of showcase projects to NRCS Headquarters by April 24, 2009. All offers to selected applicants were to be formally accepted, in writing, and obligated prior to July 3, 2009, and easements were to be closed prior to February 3, 2010.

Historically, in exchange for a permanent conservation easement that gives the agency the full authority to restore and enhance the floodplain's functions and values, a landowner received payment based on an appraisal of the land. However, under Recovery Act procedures, a landowner receives the lowest of the three following values as an easement payment, instead of obtaining an appraisal:

- an area-wide market analysis or survey,
- the amount corresponding to a geographical area rate cap, as determined by the Secretary in regulations,
- or the offer made by the landowner.

According to NRCS guidance, appraisals were not to be obtained for Recovery Act floodplain easement enrollment. This decision was made to facilitate timely distribution of Recovery Act funds.

Following landowner acceptance and subsequent completion of a restoration plan for the easement, NRCS was to obligate restoration funds. Restoration was to be fully completed prior to December 30, 2010, or by subsequently authorized extensions.

Restoration

For Recovery Act-funded floodplain easements, NRCS was to pay 100 percent of the actual cost of restoration efforts. NRCS actively restores natural floodplain features and characteristics by re-creating topographic diversity, increasing the duration of inundation and saturation of water, and providing for the re-establishment of native vegetation on easement land. Restoration on floodplain easements is to include the necessary conservation practices, measures, and activities required to restore the floodplain functions and values to its natural condition to the greatest extent practicable. This could involve such practices as removing dikes, planting native grasses, planting native trees, un-leveling ground that has been leveled, and plugging drainage ditches in order to restore the historic hydrology and wildlife habitat. The removal of existing structures, including fences and incidental farm buildings, is to be allowed as a restoration practice, if it is necessary to permit the floodplain to function properly during flood events.

Landowner Use

Landowners retain several rights to the property, including:

- quiet enjoyment,
- the right to control public access,
- and the right to undeveloped recreational use, such as hunting and fishing.

At any time, a landowner may obtain authorization from NRCS to engage in other activities, provided that NRCS determines these activities will further the protection and enhancement of the easement's floodplain functions and values. Compatible uses may include managed timber harvest, periodic haying, or grazing. NRCS determines the amount, method, timing, intensity, and duration of any compatible use that might be authorized.

Objectives

The overall objectives of our audit oversight of the Recovery Act monies are to ensure:

- NRCS' Recovery Act-related programs are timely and effectively implemented,
- proper internal control procedures are established,
- program participants meet eligibility guidelines,
- participants properly comply with program requirements,
- and agencies establish effective compliance operations.

The objectives of this phase of the audit are to assess whether:

- the determined valuation results in fair compensation for the easement,
- NRCS' methodology used to select and acquire easements functioned adequately to achieve program efficiency and obtained quality easements,
- and program participants and land accepted for easements met eligibility guidelines.

Section 1: NRCS' Easement Restoration and Documentation Could Be Improved

Finding 1: Easements Were Not Restored According to Program Rules

For 14 of 78 easements NRCS acquired, restoration efforts may not have been consistent with the program's objective of restoring floodplain functions and values to the natural conditions to the greatest extent practicable. Due to an ambiguous definition of "natural conditions" in EWPP floodplain easement (FPE) guidance, NRCS personnel did not always develop plans that would ensure restoration of floodplain easements consistent with program objectives and consistent with the preliminary plans. This occurred because NRCS personnel inconsistently interpreted the definition of "natural conditions." As a result, Recovery Act funds may have been better targeted to other easements that provided greater floodplain benefits for the funds expended.

NRCS' program manual states that restoration on floodplain easements will include all necessary conservation practices, measures, and activities required to restore the floodplain functions and values to the natural conditions to the greatest extent practicable.⁶ NRCS provided additional guidance to States through a frequently asked questions document. In response to a question related to "Cadillac restorations," NRCS stated that the level of restoration is to restore the floodplain as close to its natural condition as possible. Doing so would, for example, involve removing dikes, planting native grasses and trees, un-leveling ground, plugging drainage ditches, and ripping tile lines in order to return the historic hydrology and wildlife habitat to the floodplain.

OIG determined that NRCS officials followed program guidance inconsistently concerning restoration efforts. NRCS guidance did not provide a clear definition of "natural" conditions. As a result, State office personnel interpreted the term "natural" differently, allowing some non-natural features within easement boundaries. In most instances, NRCS removed natural and artificial debris from easements, but in some instances NRCS allowed non-natural items to remain. Program guidance refers repeatedly to the removal of structures that are impediments to floodplain function. OIG identified an easement restoration effort in Arkansas that appeared to go beyond natural conditions by installing man-made or non-natural features on the easement that would allow shallow water management during non-flooded periods.

Unlike restorations on other easements in our sample, NRCS funds were used to construct earthen levees and concrete water control structures. In addition, the landowners installed underground piping and risers at their own expense to have the ability to pump water onto the land. The Arkansas State office indicated, and the national office agreed, that the ability to pump water was necessary to recreate historic soil conditions and plant life that may have existed prior to a levee system in the area that now diverts most flood waters. Arkansas officials informed OIG that there was little guidance on determining the "natural conditions" of easements. When

⁶ EWPP Manual 390, Circular 2, March 10, 2009.

they received a signed memorandum from the Chief of NRCS, they interpreted it to mean that they could perform more extensive restorations than originally planned.⁷

OIG reviewed the memo and agrees that it instructed the State office to use the best science and technology. However, OIG found that the document does not necessarily allow for the construction of non-natural features on a floodplain easement that may interfere with the easement's ability to function as a floodplain. Program guidance requires these acquired easements to be restored to a natural floodplain condition to the greatest extent practicable. Such man-made features and controls may not be consistent with program goals of restoring the floodplain functions and values to natural conditions to the greatest extent practicable.

NRCS obligated \$215,656 for this restoration, which included the installation of levees and water control structures on the easement. The restoration plan also allowed the landowner to install underground piping and a pumping station at his own expense. The figures below show underground water piping components and a levee being constructed in order to control the amount of water held on the land.⁸

Figure 1: Irrigation Well to Pump Water



Figure 2: Underground Piping and Riser for Water Release



⁷ The State office received a memorandum signed by the NRCS Chief on September 22, 2009, with action required by October 30, 2009.

⁸ Any application of supplemental water through pumping is restricted by the Warranty Easement Deed and applicable compatible use agreements (CUA) and, if authorized by NRCS, is entirely at the landowner's expense.

Figure 3: Underground Piping System Being Installed on the Easement



Figure 4: Levee and Water Control Structure to Control the Amount of Water on the Easement



Restorations that have the appearance of being inconsistent with program goals by hindering the natural flow of water could be precluded by NRCS clarifying its definition of “natural conditions” and developing a national policy for documentary support for final restoration plans that include installation of man-made features.

OIG also observed that the preliminary restoration plan for this easement called for planting trees. However, after being approved for funding and receiving a memo from the Chief of NRCS stating to use the best science and technology, the State office allowed changes in the restoration plan to include installing the man-made structures and the underground water lines in order to create ponds and keep standing water on the land. The national office did not provide documents to show it approved the change in the restoration plans, yet it approved funding for the plan.

The land manager of this easement did not mention the restoration to historical conditions on the application for enrollment in EWPP-FPE. When interviewed, the manager indicated that he planned to manipulate water levels to facilitate hunting activities, which could include pumping water onto the land when other water in the area is frozen. However, any application of supplemental water on the easement area must be specifically authorized by NRCS, and the current CUA limits water application to moist-soil management. Therefore, NRCS will remain responsible for ensuring the ongoing application and management of supplemental water does not interfere with the easement’s ability to function as a floodplain.

In contrast to this project that installed man-made structures on the land, OIG found that another applicant in Arkansas actually dropped out of the program after being informed he was not allowed to keep a levee that stores water to use for irrigation. NRCS officials indicated that they did not have adequate guidance related to documenting funding decisions. This occurred because the Recovery Act program used a different approval process than the normal EWPP. For EWPP, the national office is not normally involved in the approval of specific projects. OIG

maintains that national policy should be developed for documenting significant divergences between the preliminary and final restoration plans such as these and ensuring such documentation exists once plans are completed.

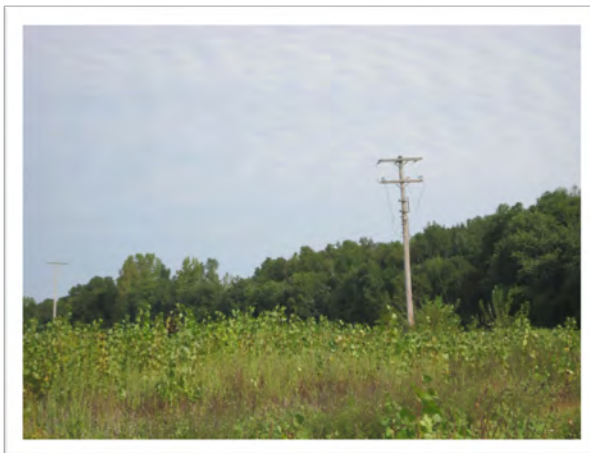
In addition to apparent differences in restoration plans across easements regarding levees and their creation or removal, OIG observed differences in the man-made features that NRCS permitted to remain on easements. Along with the Arkansas project, OIG identified an easement that included a raised gravel driveway within the easement boundaries. The restoration plan did not call for the removal of the driveway. NRCS officials stated that the driveway was left in the easement area so that they would have control over any future development of the driveway. In this instance, NRCS decided to leave a non-natural feature in an easement, when the program goals called for restoring land to a natural condition to the greatest extent practicable, which would ideally allow for the natural flow of water over the floodplain.

In another State, OIG identified utility poles not removed from an easement, even though the power line is no longer in use. State officials indicated that the poles provided wildlife benefits for birds. This instance is similar to the driveway example above in that NRCS did not remove non-natural items on an easement.

Figure 5: A Raised Gravel Driveway Within Easement Boundaries



Figure 6: Utility Poles Not Removed from Easement



The pictures above show some of the items that OIG identified while performing site visits involving our sample. Other items observed within the easements included tires, an old car, appliances, a boat, and interior fencing. By allowing non-natural debris to remain in the floodplain, NRCS is not returning the land to a natural condition to the greatest extent practicable.

Though the goal of the FPE is to restore the floodplain functions and values to their natural conditions to the greatest extent practicable, NRCS agreed that these restorations did not always return land to a pristine natural condition; however, there may have been sufficient

environmental or economic justifications. NRCS gave the example that including the driveway within the easement allows NRCS more control over how the driveway is maintained or changed, which may impact the floodplain. They also agreed that they could have improved documentation of those justifications within the case files. OIG acknowledges that some non-natural or man-made features may be too costly or destructive to remove; however, in those cases, NRCS should clearly document the reason why items were allowed to remain on the easement in the case file.

Recommendation 1

Develop EWPP-FPE restoration policy to clarify its definition of “natural conditions” and policy regarding documentary support for: (1) final restoration plans that include the installation of hydrology restoration or other features that may require maintenance, (2) significant divergences between the preliminary planning/approval processes and final restoration plans, and (3) restorations where non-natural or man-made features are allowed to remain.

Agency Response

In its January 16, 2013, response, NRCS stated that the EWPP manual (390 NEWPPM, Part 514) will be updated to provide additional policy and guidance clarifying the definitions and documentary support for the items identified in Recommendation 1. NRCS stated that the estimated completion date for the corrective action is June 30, 2013.

OIG Position

We accept management decision for this recommendation.

Finding 2: NRCS’ Documentation of Land Eligibility and Funding Decisions Was Inadequate

We found that 7 of 9 States did not always maintain evidence of flooding and damage, such as photographs or insurance documents, to support their eligibility decisions, and NRCS did not develop and maintain documentation of the decision-making process for prioritizing applicants. This occurred because NRCS lacked adequate guidance related to documenting its eligibility determination and selection process, and did not adequately update its guidance to meet the unprecedented levels of accountability required by the Recovery Act. Without adequate supporting documents, NRCS cannot demonstrate that it met these additional requirements. Further, because some NRCS decision-makers have subsequently left USDA, NRCS is unable to account for discrepancies between State rankings and national office prioritization decisions to demonstrate that it treated applicants equitably when selecting projects for funding.

To be eligible for EWPP-FPE, generally, land must be located in an authorized watershed and damaged by flooding at least twice in the previous 10 years or once in the previous 12 months.⁹ Although program funds are to be used only to fund eligible easement projects, NRCS did not always maintain documentation to support the eligibility of the funded applications. While 27 of the 78 randomly selected files contained evidence related to flooding and damage, such as insurance records, documented rainfall amounts (stream gauge records), photographs, and/or newspaper articles, OIG noted that 51 application files did not contain clear evidence to support NRCS' eligibility determinations. NRCS agreed that additional guidance was needed concerning supporting documented evidence. Unless NRCS maintains documentation of eligibility in the program files, it is more difficult for the agency to readily demonstrate that it distributed Recovery Act funds on eligible lands.

Due to the lack of guidance on documentation needed, some States were strict about requiring documented evidence that land had flooded and incurred damage or was located in a dam breach inundation area, while others were not. OIG identified one State that required documented evidence in order to verify eligibility, even though national guidance did not require it, while other States did not maintain adequate, if any, documentation in their individual easement files. In conjunction with States that have established guidance relating to documented evidence of eligibility, NRCS should identify the types of documents that would provide adequate evidence to assess eligibility and develop national guidance for maintaining them in project files.

In addition, NRCS did not have guidance for creating and maintaining documentation concerning the approval process that took place at the NRCS national office. National office personnel were responsible for selecting EWPP projects from State ranking lists. Without documents pertaining to this process, OIG and NRCS officials without firsthand knowledge of the process do not have a basis for assessing this approval process and evaluating whether NRCS' decisions were appropriate. OIG noted that the highest ranked application the State of Oregon submitted was not selected for funding, and that it is not clear why NRCS instead determined to fund lower-ranked applications from this State. Similarly, during a second round of funding, NRCS passed over higher-ranked applications in Arkansas and funded lower-ranked applications from that State. NRCS State office personnel stated that any skipped applications were either funded through another program or the applicants chose to drop from the floodplain easement program. However, OIG contacted three of the skipped applicants and learned that they had received a letter stating that funding was not available. The applicants were still interested in enrolling their land in the floodplain easement program if additional funding became available. It is unclear whether these applicants should have received the additional funding that became available, due to the lack of transparency in the selection and approval process. State office officials could not explain why this happened.

OIG also noted that NRCS chose not to fund any projects without some form of restoration in the first round of funding, as these projects were likely to create fewer jobs than other Recovery Act projects. However, NRCS then funded zero restoration projects in subsequent rounds of funding. As the original NRCS decision makers in the funding approval process have either moved on to

⁹ EWPP Manual 390, Circular 2, March 10, 2009.

other jobs or have retired, NRCS is unable to account for discrepancies between State rankings and prioritization decisions at the national office to demonstrate that it treated applicants fairly and equitably when selecting projects for funding.

Recommendation 2

Survey States for best practices regarding methodologies for documenting land eligibility. Revise program procedures to incorporate those best practices and ensure consistent land eligibility documentation is maintained in program files. Implement identified best practices used in documenting land eligibility of easements nationwide.

Agency Response

In its January 16, 2013, response, NRCS stated that updated policy and procedures regarding the documentation of land eligibility determinations has been drafted and will be published in the next update to the EWPP manual (390 NEWPPM, Part 514). As language has already been drafted, it will not be necessary to survey the States for best practices. NRCS stated that the estimated completion date is June 30, 2013.

OIG Position

We accept management decision for this recommendation.

Recommendation 3

Develop and issue guidance requiring documentation of the decision making processes used in funding EWPP applications, including reasons for deviating from State rankings.

Agency Response

In its response, NRCS stated that the selection of individual projects at the national level for Recovery Act funding was a deviation from standard operating procedures due to the unique funding criteria and need for national oversight in project selection. NRCS had identified in its Recovery Act implementation plan, and amendments thereto, the procedural mechanisms that would be used to select EWPP projects for Recovery Act purposes only. Additionally, national recommendations for funding followed particular criteria, but unfortunately, a sufficient permanent record was not maintained due to the unprecedented nature of the funding and timelines at a time of high staff turnover. Existing EWPP-FPE policy sufficiently addresses the ranking and selection of individual projects at the State level for normal funding opportunities. Should future unique funding be provided that would require individual project selection at the national level, NRCS will ensure that protocol regarding documentation of individual project selection based on the EWPP-FPE program purposes and the specific objectives of the funding will be made.

Estimated Completion Date: As needed based on availability of future funding.

OIG Position

We accept management decision for this recommendation.

Finding 3: NRCS' Acquired Easements Were Not In Compliance with Program Rules

At the time of our field visits, landowners had recently transferred all rights, not reserved, through the conveyance of floodplain easements to the United States. However, we observed that at least 9 out of 78 landowners were taking prohibited actions on easements, some of which may have impeded restoration efforts. For instance, we observed that landowners who lacked a CUA were taking actions, such as grading easement lands for a pond, removing top soil, mowing pathways, and burning debris. NRCS did not provide adequate guidance to landowners regarding actions prohibited on easements. NRCS officials stated that they were unaware of the prohibited actions we found, and did not realize their guidance was insufficient. As a result, land was not being maintained in a manner consistent with the program goal of restoring floodplains to a natural condition.

Following the granting of an easement to the United States through a Warranty Easement Deed, the landowner retains limited rights to the land, which include control of access and undeveloped recreational uses. The Warranty Easement Deed restricts landowners from all other actions, unless they receive specific authorization from NRCS through the issuance of a CUA.¹⁰ However, we found that landowners did not adequately understand prohibited actions on easements or information on how or when to obtain a CUA.

OIG observed landowners taking unapproved actions on nine sites where OIG conducted site visits. As these easements were recently enrolled in the program and the financial transactions had closed, OIG did not expect to see landowners taking any actions on the land that would have been outside of the landowners' reserved rights. Nonetheless, landowners were taking a variety of actions on approximately 11 percent of sites in our sample. In general, landowners were unaware of the specific restrictions.

For instance, during one site visit, OIG identified an easement that had heavy machinery on the land in order to grade dirt to create a pond (see figures 7 and 8). No part of the restoration plan for this identified site included the construction of a pond. In fact, as the land was previously enrolled in NRCS' Conservation Reserve Program, the restoration plan for this easement called for no actions to be taken on the land.

¹⁰ NRCS-LTP-20, revised August 2005, *Emergency Watershed Protection Program Floodplain Warranty Easement Deed*.

Figure 7: Heavy Machinery on an Easement Site



Figure 8: Tracks Resulting from Actions Taken to Install a Pond on an Easement Site



When we asked State officials about the actions being taken on the easement site, they agreed that the work should not have been performed at the site. State officials stated that the applicant was now restoring the wetland to the State's restoration standards, and performing the work at no cost to the Government. The applicant has been instructed to obtain a CUA before any other work is performed on the site.

In another instance, OIG identified a site where top soil had been scraped from the land with heavy machinery (see figure 9).

Figure 9: Tracks from Heavy Machinery Used to Remove Dirt from the Easement Site



NRCS was unaware this action was occurring until State personnel accompanied OIG during the site visit. When we asked officials about this action, NRCS stated the removal of the soil left no appreciable reduction in surface elevation and, therefore, did not affect the easement restoration plan.

Additionally, OIG identified at least six other easements where landowners had mowed pathways (see figure 10). Landowners are required to obtain a CUA for activities not reserved to the landowner, including mowing. However, OIG found no evidence that any CUAs were in place at the time of site visits.

Figure 10: Mowed Pathway on an Easement Site



OIG identified another easement where the landowner had been burning material. The landowner's limited reserved rights do not extend to this action.

NRCS provides guidance to landowners who participate in the easement program through the Warranty Easement Deed, signed by the landowner and NRCS, and recorded in the public records. Within the text of the Warranty Easement Deed, NRCS has prohibited landowners from performing certain actions. By improving communication to provide more detailed information about landowners' reserved rights, prohibited actions, and the process to obtain CUAs, including the purposes for which landowners must obtain them, NRCS can better ensure that landowners do not take actions that may interfere with restoration plans or the natural values of the floodplain.

Recommendation 4

Improve guidance provided to landowners participating in EWPP to clearly define actions prohibited on easements, and the need to obtain CUAs when landowners want to take actions on easements that are not among the rights reserved to them in the EWPP Warranty Easement Deeds.

Agency Response

In its January 16, 2013, response, NRCS stated that the EWPP-FPE Warranty Easement Deed clearly identifies prohibited activities. NRCS will provide additional training to personnel regarding communicating the terms of the EWPP-FPE Warranty Easement Deed to easement landowners. NRCS issued revised easement monitoring policy in June 2011 and January 2012 (Circular 21 and 440 CPM 527 respectively) that requires annual easement monitoring and documentation of findings on all existing easements, including EWPP-FPE. Regular monitoring will increase NRCS' ability to detect prohibited activities and implement management and enforcement on EWPP-FPE.

Estimated Completion Date: Training by July 30, 2013; monitoring and enforcement is on-going.

OIG Position

We accept management decision for this recommendation.

Section 2: NRCS Did Not Provide Correct Compensation for Easements

Finding 4: States Did Not Prevent Improper Payments

We found NRCS State offices improperly compensated landowners for 5 of 78 easements. This occurred because NRCS did not always accurately update calculations when amending agreements, and its quality control reviews were ineffective in identifying errors before issuing payments. As a result, NRCS issued improper payments, totaling \$139,474, and has reduced assurance that it calculated payments for other floodplain easements correctly.¹¹

As stated in a program enrollment agreement known as the Option Agreement to Purchase (OATP), NRCS compensates landowners for easements at an agreed-upon per acre rate.¹² If NRCS opts to purchase an easement from a landowner enrolled in the program, NRCS hires an outside agency to survey the land to ensure the landowner is being compensated for the correct number of acres. If necessary, NRCS amends the OATP to correspond with survey results. NRCS' quality review procedures established by EWPP Manual 390, Circular 2, did not require adequate review of payment calculations prior to payment.

Although NRCS generally amended OATPs based on survey results, we identified that in five cases, NRCS did not ensure the accuracy of the amended OATP. Additionally, in one case, the amended OATP did not reflect an agreed-upon reduction to the per-acre rate.¹³ Four of the five cases occurred in Wisconsin, while the fifth case occurred in Oregon.

In Wisconsin, the State office did not ensure the four amended OATPs reflected the correct, survey-identified acreage amount. Errors in recording actual acres for three of the four Wisconsin cases resulted in underpayments to producers, totaling \$18,172. State office officials agreed that their review had not been adequate to identify these errors. NRCS agreed to pay these producers the amounts owed them. In the other Wisconsin case, the State office did not ensure that the OATP reflected an agreed-upon rate reduction. Although the landowner in this case agreed at signup to accept \$3,000 per acre (a 25-percent reduction in the NRCS-established rate in that geographical area), NRCS prepared the amended OATP using the generally established \$4,000 per acre rate. Thus, the amended OATP should have stated a total of \$326,940 (108.98 acres at \$3,000 per acre), but stated a total of \$435,920 (108.98 acres at \$4,000 per acre). The result was a \$108,980 overpayment to the landowner.

In the Oregon case, the State office similarly attributed the error to an ineffective quality review process. NRCS used an incorrect rate per acre in the original OATP (\$4,150 per acre), instead of

¹¹ The \$139,474 includes 2 overpayments totaling \$121,302 and 3 underpayments totaling \$18,172 out of \$27.4 million included in our review.

¹² EWPP Manual 390, Circular 2, March 10, 2009.

¹³ To increase the likelihood of enrollment in the floodplain easement component of EWPP, some landowners offered, during the application phase, to accept compensation of less than the geographical area rate cap for easements.

the rate NRCS established for this area in Oregon (\$4,125). When the completed survey identified the correct acreage at 55.7 acres, the State office completed the Warranty Easement Deed in the amount of \$242,085. However, an amended OATP should have been completed for 55.7 acres at \$4,125, in the amount of \$229,762. The result of this error was a \$12,322 overpayment. As the State office was aware of this error prior to OIG's review, NRCS is attempting to recover the overpayment and has sent an official letter to the landowner. NRCS attributed this error to the misapplication of the geographical area rate cap in their calculation and to inadequate review prior to the issuance of the payment.

We determined that NRCS did not identify these errors prior to payment because reviews performed on documents prior to completing Warranty Easement Deeds were inadequate to identify the miscalculations. When we asked officials about taking action to prevent and correct the errors, NRCS stated that additional guidance has been provided in both program and financial management areas and training provided to staff, concerning adjustments to easement compensation amounts based on final surveyed acres and landowner offers. Taking action to perform more rigorous reviews of the OATP before issuance would enhance NRCS' ability to avoid issuing improper payments.

The Wisconsin NRCS State office responded to OIG questions about recovering the funds and correcting the underpayments by stating that when NRCS and the landowners signed the amended OATP, it became a binding agreement. Therefore, NRCS will not be pursuing the overpayment given to the landowner. However, in the three underpayment cases, Wisconsin agreed to properly adjust the compensation for the landowners, even though they had the same binding agreement. OIG believes that, just as an adjustment of the underpayment would adhere to the compensation methods provided by EWPP Manual 390, an adjustment of the overpayment would be similarly appropriate.

Recommendation 5

Incorporate additional review processes for final payment calculations into the EWPP-FPE manual to ensure accuracy of calculations prior to signing Warranty Easement Deeds and issuing payments.

Agency Response

In its January 16, 2013, response, NRCS stated that the National Easement Staging Tool (NEST), which is the NRCS official database for maintaining easement information, has been upgraded to include financial data screens and a financial user role. These screens require separate entry of easement financial information by a financial user. NEST currently captures fund obligation information and is being updated to also include easement payment information. The Financial Management Modernization Initiative system (FMMI) is the agency's official financial management system; however, the data entry protocol requires that obligation information and future payment information related to easement payments be entered into FMMI and NEST. Additional automated controls are being developed in NEST that would create an alert for the financial user that when the final acreages are input, the associated payment amount must be

reviewed and adjusted as necessary. Training will be provided on the additional NEST upgrades as the programming is completed.

Estimated Completion Date: July 30, 2013

OIG Position

We accept management decision for this recommendation.

Recommendation 6

Review cited overpayments, totaling \$121,302, and take appropriate corrective actions.

Agency Response

In its response, NRCS stated that regarding the overpayment in Wisconsin, NRCS reviewed overpayments with the Office of the General Counsel (OGC) and determined that the overpaid amounts will not be collected. NRCS agreed to pay the non-reduced per acre rate by entering into the Agreement for Purchase. This was an NRCS error. Additionally, the final 108.98 acreage amount differs by 0.38 acres from the original estimated amount which falls within the 'more or less' identified in the Warranty Easement Deed. Therefore, no adjustment to the easement payment or deed is required based on the original landowner offer or the final surveyed acreage. Regarding the overpayment in Oregon, the landowner has been notified of the overpayment and collection proceedings are underway. NRCS stated that the corrective action has been completed.

OIG Position

We accept management decision on the overpayment in Oregon. However, we do not accept management decision regarding the overpayment in Wisconsin in the amount of \$108,980. In its response, NRCS stated that in the Wisconsin case, it was NRCS' error. Therefore, since NRCS overpaid this amount, a receivable should be established even though OGC determined that the overpaid amounts cannot be collected. The establishment of an improper payment as an account receivable is distinct from the collection of any overpayment. If collection is not to be pursued, NRCS should also follow the Department's and the agency's internal and statutory procedures for waiving the collection. In order to reach management decision per Departmental Regulation 1720-1, OIG needs to see evidence that a receivable for the overpaid amount was established and a bill of collection was issued to the producer stating, in this case, that repayment is not due because it was an NRCS error. NRCS also needs to provide OIG a written copy of OGC's opinion stating why NRCS should not pursue collection.

Recommendation 7

Review cited underpayments, totaling \$18,172, and take appropriate corrective actions.

Agency Response

In its response, NRCS stated that it reviewed underpayments, and additional payments have been made on the three underpaid easements. Also, corrected deeds have been recorded reflecting the correct final surveyed acreage amounts. NRCS stated that the corrective action has been completed.

OIG Position

We accept management decision for this recommendation.

Scope and Methodology

In order to test NRCS' key controls to acquire easements, OIG assessed floodplain easement program activities NRCS undertakes from the time it receives an easement application until the floodplain is restored to its natural condition.

OIG conducted the audit at NRCS' national office in Washington, D.C. and NRCS State offices in Arkansas, Indiana, Iowa, Mississippi, North Dakota, Oregon, South Dakota, West Virginia, and Wisconsin. At the audit sites, OIG interviewed NRCS' national, State, and area officials about the program's resources, and about Recovery Act-related compliance activities, internal controls, and procedures for approving applications for easements purchased with Recovery Act funds. OIG performed audit fieldwork from August 2010 through June 2012.

NRCS received 4,288 program applications and ultimately funded 274 floodplain easement projects. OIG performed reviews on a random sample of 78 projects. These projects represent about \$27 million of \$142 million in total obligations as of March 15, 2012. These reviews included both case file reviews and on-site visits to all project locations. During on-site visits, NRCS personnel accompanied OIG auditors as they visited the 78 easements in the selected States.

To accomplish the objectives, OIG:

- reviewed the program's Recovery Act plan, pertinent regulations, policies, procedures, internal and external guidance (e.g., agency handbooks and OMB publications), and internal controls;
- interviewed 71 program participants in selected States;
- interviewed officials at State and national NRCS offices;
- reviewed a total of 78 case files;
- and conducted 78 site visits.

During this audit, we did not review, analyze, or verify information in the agency's easement database and, therefore, make no representation of the adequacy of the system or the information generated by it.

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

Abbreviations

CUA	Compatible Use Agreement
EWPP	Emergency Watershed Protection Program
FMMI	Financial Management Modernization Initiative
FPE	Floodplain Easement
NEST	National Easement Staging Tool
NRCS	Natural Resources Conservation Service
OATP	Option Agreement To Purchase
OGC	Office of the General Counsel
OIG	Office of Inspector General
OMB	Office of Management and Budget
P.L.	Public Law
USDA	United States Department of Agriculture

Exhibit A: Summary of Monetary Results

Finding	Recommendation	Description	Amount	Category
4	6	Overpayment on Floodplain Easement - #3553	\$12,322	Questioned Costs, Recovery Recommended
4	6	Overpayment on Floodplain Easement - #3603	\$108,980	Questioned Costs, Recovery Recommended
4	7	Underpayment on Floodplain Easement - #3607	\$12,630	Underpayments and Overcollections
4	7	Underpayment on Floodplain Easement - #3621	\$3,300	Underpayments and Overcollections
4	7	Underpayment on Floodplain Easement - #3647	\$2,242	Underpayments and Overcollections
Total			\$139,474	

**USDA'S
NATURAL RESOURCES CONSERVATION
SERVICE'S
RESPONSE TO AUDIT REPORT**



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

Date: January 16, 2013

SUBJECT: SPA - Natural Resources Conservation Service (NRCS) Management Decision Responses for Recommendations Number 1-7, in the Office of Inspector General (OIG) Report – Agency Responses for Audit Report 10703-0005-KC NRCS – American Recovery and Reinvestment Act (ARRA) - Emergency Watershed Protection Program Floodplain Easements (EWPP-FPE), Field Confirmations

TO: Gil H. Harden
Assistant Inspector General for Audit
Office of Inspector General

File Code: 340

This memorandum is in response to OIG Official Draft Report # 10703-0005-KC, ARRA EWPP-FPE, Field Confirmations. Attached are responses to Recommendations Number 1-7 for Management Decision. The responses address the actions taken and planned for each audit recommendation, and their estimated completion dates.

NRCS appreciates the dialogue with OIG that has occurred throughout the audit process and the opportunity to comment on the official draft.

If you have questions, please contact Leon Brooks, Director, Compliance Division, at (301) 504-2190, or by email at leon.brooks@wdc.udsa.gov.

/s/

Jason A. Weller
Acting Chief

Attachment

Agency Responses for Audit Report 10703-0005-KC, Natural Resources Conservation Service – American Recovery and Reinvestment Act - Emergency Watershed Protection Program Floodplain Easements (EWPP-FPE), Field Confirmations

Finding 1: Easements Were Not Restored According to Program Rules

Recommendation 1

Develop EWPP-FPE restoration policy to clarify its definition of “natural conditions” and policy regarding documentary support for: (1) final restoration plans that include the installation of hydrology restoration or other features that may require maintenance, (2) significant divergences between the preliminary planning/approval processes and final restoration plans, and (3) restorations where non-natural or man-made features are allowed to remain.

Agency Response:

The EWPP manual (390 NEWPPM, Part 514) will be updated to provide additional policy and guidance clarifying the definitions and documentary support for the items identified in recommendation 1.

Estimated Completion Date: 6/30/2013

OIG Position: To be determined by OIG.

Finding 2: NRCS’ Documentation of Land Eligibility and Funding Decisions Were Inadequate

Recommendation 2

Survey States for best practices regarding methodologies for documenting land eligibility. Revise program procedures to incorporate those best practices and ensure consistent land eligibility documentation is maintained in program files. Implement identified best practices used in documenting land eligibility of easements nationwide.

Agency Response:

Updated policy and procedure regarding the documentation of land eligibility determinations has been drafted and will be published in the next update to the EWPP manual (390 NEWPPM, Part 514). As language has already been drafted, it will not be necessary to survey the States for best practices.

Estimated Completion Date: 6/30/2013

IG Position: To be determined by OIG.

Recommendation 3

Develop and issue guidance requiring documentation of the decision making processes used in funding EWPP applications, including reasons for deviating from State rankings.

Agency Response:

The selection of individual projects at the national level for ARRA funding was a deviation from standard operating procedures due to the unique funding criteria and need for national oversight in project selection. NRCS had identified in its ARRA implementation plan, and amendments thereto, the procedural mechanisms that would be used to select EWPP projects for ARRA purposes only. Additionally, national recommendations for funding followed particular criteria, but unfortunately, a sufficient permanent record was not maintained due to the unprecedented nature of the funding and timelines at a time of high staff turnover. Existing EWPP-FPE policy sufficiently addresses the ranking and selection of individual projects at the State level for normal funding opportunities. Should future unique funding be provided that would require individual project selection at the national level, NRCS will ensure that protocol regarding documentation of individual project selection based on the EWPP-FPE program purposes and the specific objectives of the funding will be made.

Estimated Completion Date: As needed based on availability of future funding

OIG Position: To be determined by OIG.

Finding 3: NRCS' Acquired Easements Were Not In Compliance with Program Rules**Recommendation 4**

Improve guidance provided to landowners participating in EWPP to clearly define actions prohibited on easements, and the need to obtain Compatible Use Authorization (CUA) when a landowner wants to take an action on the easement that is not among the rights reserved to them in the EWPP Warranty Easement Deed.

Agency Response:

The EWPP-FPE Warranty Easement Deed clearly identifies prohibited activities. NRCS will provide additional training to personnel regarding communicating the terms of the EWPP-FPE Warranty Easement Deed to easement landowners. NRCS issued revised easement monitoring policy in June 2011 and January 2012 (Circular 21 and 440 CPM 527 respectively) that requires annual easement monitoring and documentation of findings on all existing easements, including EWPP-FPE. Regular monitoring will increase NRCS' ability to detect prohibited activities and implement management and enforcement on EWPP-FPE.

Estimated Completion Date: Training by 7/30/2013; monitoring and enforcement is ongoing

OIG Position: To be determined by OIG.

Finding 4: States Did Not Prevent Improper Payments**Recommendation 5**

Incorporate additional review processes for final payment calculations into the EWPP-FPE manual to ensure accuracy of calculations prior to signing Warranty Easement Deeds and issuing payments.

Agency Response:

The National Easement Staging Tool (NEST), which is the NRCS official database for maintaining easement information, has been upgraded to include financial data screens and a financial user role. These screens require separate entry of easement financial information by a financial user. NEST currently captures fund obligation information and is being updated to also include easement payment information. The Financial Management Modernization Initiative system (FMMI) is the agency's official financial management system; however, the data entry protocol requires that obligation information and future payment information related to easement payments be entered into FMMI and NEST. Additional automated controls are being developed in NEST that would create an alert for the financial user when the final acreages are input that the associated payment amount must be reviewed and adjusted as necessary. Training will be provided on the additional NEST upgrades as the programming is completed.

Estimated Completion Date: 7/30/2013

OIG Position: To be determined by OIG.

Recommendation 6

Review cited overpayments, totaling \$121,302, and take appropriate corrective actions.

Agency Response:

Regarding the overpayment in Wisconsin, NRCS reviewed overpayments with the Office of the General Counsel (OGC) and determined that the overpaid amounts will not be collected. NRCS agreed to pay the non-reduced per acre rate by entering into the Agreement for Purchase. This was an NRCS error. Additionally, the final 108.98 acreage amount differs by 0.38 acres from the original estimated amount which falls within the 'more or less' identified in the Warranty Easement Deed. Therefore, no adjustment to the easement payment or deed is required based on the original landowner offer or the final surveyed acreage. Regarding the overpayment in Oregon, the landowner has been notified of the overpayment and collection proceedings are underway.

Estimated Completion Date: Completed

OIG Position: To be determined by OIG.

Recommendation 7

Review cited underpayments, totaling \$18,172, and take appropriate corrective actions.

Agency Response:

NRCS reviewed underpayments, and additional payments have been made on the three underpaid easements and corrected deeds have been recorded reflecting the correct final surveyed acreage amounts.

Estimated Completion Date: Completed

OIG Position: To be determined by OIG.

Informational copies of this report have been distributed to:

Acting Chief, Natural Resources Conservation Service
Attn: Agency Liaison

Government Accountability Office

Office of Management and Budget

Director, Planning and Accountability Division, Office of the Chief Financial Officer

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