



United States Department of Agriculture

Office of Inspector General





What Were OIG's

Objectives

OIG's objectives were to determine whether NRCS conservation easement monitoring and noncompliance management policies and procedures are adequate and functioning as intended. Those procedures should ensure compliance with NRCS conservation easement provisions and that appropriate actions are taken when noncompliance is identified.

What OIG Reviewed

We interviewed NRCS national and State office officials, performed 62 site visits at NRCS easements, and reviewed easement data on a universe of over 17,500 easements as of September 30, 2013.

What OIG Recommends

We recommended that NRCS improve the way it carries out monitoring activities at the State and local level; additionally, we recommended improvements to NEST to allow better tracking of easement monitoring.

OIG reviewed how NRCS is ensuring compliance with its easement policy, as well as how the agency is correcting noncompliant easements.

What OIG Found

The Office of Inspector General (OIG) found that, although the Natural Resources Conservation Service (NRCS) has recently made improvements to its easement monitoring policy, a number of additional improvements should be made. We found, for instance, that NRCS is not consistently detecting or reporting violations during onsite monitoring visits. We found violations of the terms of easement agreements and expired authorizations for compatible use on 16 of the 62 easements we visited.

NRCS relies on its National Easement Staging Tool (NEST) for its monitoring of easements, but we found that it contained invalid, incorrect, and incomplete information. For example, NRCS reviews of NEST did not identify that the agency lacks edit checks to prevent inaccurate dates from being entered, State officials were not entering data on current Compatible Use Authorizations (CUA) until the CUA was renewed, and the data for tracking easement monitoring shows 1,026 of 15,185 were either not timely completed or not timely entered into NEST.

Finally, we reviewed the files for 22 noncompliant easements and found 5 landowners who were not notified of the noncompliance and may have been unaware they needed to correct the problem.

The agency generally agreed with our 11 recommendations. We accept management decision for all recommendations.



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



DATE: July 30, 2014

AUDIT
NUMBER: 10601-0002-31

TO: Jason Weller
Chief
Natural Resources Conservation Service

ATTN: Leon Brooks
Director
Compliance Division

FROM: Gil H. Harden
Assistant Inspector General for Audit

SUBJECT: NRCS Conservation Easement Compliance

This report presents the results of the subject audit. Your written response to the official draft report, dated July 15, 2014, is included, in its entirety, at the end of this report. Your responses and the Office of Inspector General's position are incorporated into the relevant sections of the report. Based on your written responses, we are accepting your management decision for all audit recommendations in the report, and no further response to this office is necessary.

In accordance with Departmental Regulation 1720-1, final action needs 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. This report contains publically available information and will be posted in its entirety to our website (<http://www.usda.gov/oig>) in the near future.

Table of Contents

Background and Objectives	1
Section 1: NRCS Conservation Easement Compliance	3
Finding 1: NRCS Needs to Improve the Quality of Onsite Monitoring	3
Recommendation 1	5
Recommendation 2	6
Recommendation 3	6
Recommendation 4	7
Recommendation 5	7
Finding 2: NRCS Needs to Ensure the Quality and Completeness of NEST Data	8
Recommendation 6	10
Recommendation 7	10
Recommendation 8	11
Recommendation 9	11
Finding 3: NRCS Needs to Ensure Landowners are Timely Notified to Correct Noncompliances Found on Their Easements	13
Recommendation 10	15
Recommendation 11	16
Scope and Methodology	17
Abbreviations	19
Agency's Response	21

Background and Objectives

Background

The Natural Resources Conservation Service's (NRCS) conservation programs and initiatives help landowners reduce soil erosion, enhance water supplies, improve water quality, increase wildlife habitat, and reduce the damage caused by natural disasters. The conservation provisions in the Food, Conservation, and Energy Act of 2008 further provided conservation opportunities for farmers and ranchers by simplifying existing programs and creating new programs to address high-priority environmental goals. As a result of the Agricultural Act of 2014, a number of conservation programs were repealed and consolidated into the Agricultural Conservation Easement Program.¹

NRCS offers easement programs to landowners who want to maintain or enhance their land in a way beneficial to agriculture and the environment. NRCS offers different types of easement options to meet different landowner goals, ranging from keeping land in agricultural use to returning it to its natural state to benefit local wildlife:

- The Farm and Ranch Lands Protection Program (FRPP) provides up to 50 percent of the fair market value of the conservation easement matching funds to help purchase development rights to keep productive farm and ranch lands in use for agriculture purposes.
- The Wetlands Reserve Program (WRP) is a voluntary program offering landowners the opportunity to protect, restore, and enhance wetlands on their property. NRCS provides technical and financial support to help landowners with their wetland restoration efforts in order to establish long-term conservation and wildlife practices and protection.
- The Emergency Watershed Protection (EWP) Program undertakes emergency measures, including the purchase of flood plain easements, for runoff retardation and soil erosion prevention to safeguard lives and property from floods, drought, and erosion on any watershed whenever a natural occurrence impairs it. Floodplain easements restore, protect, maintain, and enhance the functions of the floodplain; conserve natural values, including fish and wildlife habitat, water quality, flood water retention, ground water recharge, and open space; and reduce long-term Federal disaster assistance.
- The Grassland Reserve Program (GRP) is a voluntary conservation program that emphasizes support for working grazing operations, enhancement of plant and animal biodiversity, and the protection of grassland under threat of conversion to other uses. Participants voluntarily limit future development and cropping uses of the land. They retain the right to conduct common grazing practices and operations related to the

¹ Economic Research Service, *2014 Farm Bill Highlights*.

production of forage and seeding, subject to certain restrictions during the nesting seasons of protected bird species.

NRCS established its monitoring policies to ensure that the integrity of the easements is being maintained and that the goals and objectives for which the easement was purchased are being met, to identify actions needed, and to maintain a relationship with the landowner. Past Office of Inspector General (OIG) audit reports on conservation easements have identified issues with the monitoring of easement compliance.² In June 2011, NRCS began incorporating monitoring aspects into the National Easement Staging Tool (NEST) in order to help address the requirement for reporting the compliance status of its easements on the financial statements. NEST houses data regarding the latest status of each easement. The annual monitoring worksheet is the basis for populating the NEST data. The monitoring worksheet helps NRCS identify easements that are at risk for noncompliance, assist in workload planning and staffing needs, track the overall quality and status of easements, and ensure program objectives are achieved. During our review, NRCS developed reports in NEST that will help it track easement monitoring and ensure that easements are monitored on an annual basis.

Since 1992, NRCS has protected and restored over 3 million acres of wetlands, grasslands, forests, and farmlands through the various easement programs it administers. As a result, NRCS has a long-term responsibility to ensure the different easement program objectives are achieved and statutory requirements are met on these lands. NRCS ensures this through annual monitoring. Currently, NRCS is responsible for more than 17,500 easements.³ Since these easements are for 30 years or for perpetuity, and since their number is growing, we initiated this review to ensure NRCS has effective systems to monitor and safeguard these assets.

Objectives

OIG's objectives were to determine whether NRCS conservation easement monitoring and noncompliance management policies and procedures are adequate and functioning as intended. Those procedures should ensure compliance with NRCS conservation easement provisions and that appropriate actions are taken when noncompliance is identified.

² OIG Audit 10099-4-SF, *Natural Resources Conservation Service Wetlands Reserve Program Wetlands Restoration and Compliance*, August 2008.

³ This includes easements enrolled in WRP, Emergency Watershed Protection for Floodplain Easements, GRP, and FRPP.

Section 1: NRCS Conservation Easement Compliance

Finding 1: NRCS Needs to Improve the Quality of Onsite Monitoring

Based on our 62 site visits and the review of the corresponding easement files, we found that NRCS is not consistently detecting and reporting violations as a result of its onsite monitoring visits. We found violations of easement agreements during our site visits or expired authorizations during our file reviews that related to 16 easements (an error rate over 25 percent). When OIG brought this problem to the attention of NRCS officials, they stated that the issues were primarily caused by insufficient training on detecting violations, failure to note expired authorizations, the lack of secondary review of data entered into NEST, and limited outreach to landowners concerning the terms of their easement agreements. OIG maintains that such inconsistency in field-level easement monitoring could diminish the agency's ability to effectively monitor its easement investments and compromise the environmental benefits of the easements.

According to NRCS policy, when a landowner enters into a WRP or Emergency Watershed Protection for Floodplain Easements Program (EWP-FEP) easement agreement, the landowner retains five rights to the easement land—title, quiet enjoyment,⁴ control of access, recreational use, and subsurface resources.⁵ Apart from these five rights, landowners can also perform other acceptable practices with NRCS approval through a Compatible Use Authorization (CUA). A “compatible use” means a use or activity conducted by a landowner on the easement area that NRCS determines, in its sole discretion, is consistent with the long-term protection and enhancement of the easement and other natural values of the easement area. Examples of compatible uses may include haying or mowing, grazing, wildlife food plots, and applying pest management activities. To ensure landowners comply with these provisions, NRCS policy states that easements are to be monitored on an annual basis.⁶ Additionally, because the practice approved through a CUA might not always serve the best interest of the easement, NRCS requires CUAs to be renewed periodically, with 10 years being the maximum time allowed without renewal.⁷

We found concerns with the monitoring performed on 16 easements where NRCS had performed onsite monitoring in the year of our review. For 10 of the 16 easements with these concerns, we found conditions where landowners violated the easement agreement by engaging in practices on the easement without proper authorization from NRCS, or where the landowner had received NRCS authorization to conduct a certain practice, but violated the terms of the authorization. For example, we found eight cases where the landowner could have sought and likely obtained a CUA to prevent a practice from being a violation. The unauthorized practices we observed were for such things as planting food plots, maintaining trails, or performing pest management. In

⁴ Quiet enjoyment is the right to enjoy and use the premises in peace without interference.

⁵ Title 440, *Conservation Program Manual*, Part 514.64, “Wetland Reserve Program,” and Title 390, *National Emergency Watershed Protection Program Manual*, Part 514.0A, “Floodplain Easement.”

⁶ Title 440, *Conservation Program Manual*, Part 527.5B, “Easement Common Provisions.”

⁷ Title 440, *Conservation Program Manual*, Part 514.62A(5), “Wetland Reserve Program.”

these cases, the landowner did not receive prior approval from NRCS to perform these practices, and the NRCS monitor did not identify the practices as violations on the annual monitoring worksheet.⁸ While not considered extremely serious violations, the fact that the agency missed these violations does have implications. If NRCS is not detecting violations, the environmental benefits the public expects from investing in an easement could be compromised. Additionally, since these easements should have been considered in violation of the easement agreements, NRCS should be performing additional onsite monitoring in future years.⁹

For the remaining six easements where we identified concerns about the monitoring NRCS performed, we found the landowner at one time received NRCS authorization to engage in a practice through a CUA and continued to do so after the CUA had expired. However, NRCS personnel performing the onsite monitoring and easement file review did not properly identify that the CUA had expired. We determined that the current annual monitoring worksheet causes some confusion regarding the existence of up-to-date CUAs for practices being conducted on the easement. For example, while the worksheet asks the monitor to identify current CUAs, the monitor might look to see only if a CUA exists in the easement file, rather than check to see if the CUA is current or expired. OIG noted that the confusion with the annual monitoring worksheet could be corrected if the worksheet had a place for monitors to enter the CUA expiration date. Monitors would then check to see if the CUA for the easement they are reviewing is current or expired. We discussed this issue with NRCS officials, who agreed that adding the CUA expiration date to the monitoring worksheet would document the CUA expiration in NEST and allow NRCS to know if landowners have current CUAs and prevent these errors on the annual monitoring worksheet.

When we spoke to NRCS State officials about the causes of the inconsistent identification and reporting of easement violations, they cited a range of issues, including insufficient training or errors by the monitors. NRCS national officials indicated that, because easement and environmental issues can be unique to each State, the monitor training was the responsibility of the State offices. However, the officials agreed that the overall training the monitors receive needs to be updated, which OIG maintains would help provide consistency for onsite monitoring, identifying violations, and eliminating common errors on the annual monitoring worksheet, such as not identifying expired CUAs. OIG believes that NRCS should determine the commonalities among all easement monitoring duties and develop universal, updated, training material to help eliminate common monitoring errors. Additionally, NRCS should identify which States have similarities in easement issues or environmental problems and ensure that a consistent State training program is used.

⁸ The eight cases were situations where a CUA could have been used to authorize the practice. The remaining two cases included various undetected easement violations that would not have been covered with a CUA and the monitor did not identify them as violations.

⁹ Annual monitoring of a compliant easement consists of the following 5-year cycle: year 1 is a site visit and file review, year 2 has an ownership review, and the last 3 years of the cycle are offsite reviews. However, if a violation occurs or other situations warrant it, NRCS will perform additional site visits as deemed necessary.

OIG also noted second party reviews are not required, and the annual monitoring worksheets we reviewed either received inconsistent or no second party review at the State office level. NRCS national office Oversight and Evaluation staff has gone to State offices to conduct quality assurance reviews of documentation in the easement files to ensure they match what is in NEST. These reviews did find errors and missing data, but these reviews were not focused on monitoring information. Therefore, we believe the national office needs to develop procedures to ensure the consistency and quality of annual monitoring. We also believe that a system of second party reviews prior to or when the NRCS State office personnel enter the annual monitoring worksheet information into NEST could reduce the issues that were related to mistakes we noted on the file reviews.

Finally, OIG observed that NRCS did not remind landowners of the terms of their agreements. Although annual outreach to the landowners is not required, OIG believes that landowners need periodic notification of their easement provisions, which could help limit the number of issues and violations on the easement. Some State office personnel said that, in the past, they performed annual outreach, but they no longer do so because there is not a simple way to pull landowner names and addresses from NEST. However, when we discussed this concern with NRCS national officials, they told us they had recently developed a standardized report that would help provide the State offices with current addresses for easement landowners.

OIG concluded that, by improving how NRCS monitors easements at the field-level, the agency can improve the effectiveness of easement compliance monitoring and maintain the integrity of NRCS' easements. NRCS purchased 1,030 easements in calendar year 2012, and 3,616 easements in the last 3 calendar years (2010-2012). Since these easements are for 30 years or for perpetuity, and since their number is growing, NRCS needs to ensure it has an effective system to monitor and safeguard these assets.

Recommendation 1

Add a place on the annual monitoring worksheet to document the expiration date for a Compatible Use Authorization (CUA), and instruct the monitors to include this information as part of their review process.

Agency Response

A section will be added to the Annual Monitoring Worksheet for monitors to enter active CUA data and distributed for use in fiscal year 2015. The estimated completion date is December 31, 2014.

OIG Position

We accept management decision for this recommendation.

Recommendation 2

Update and provide additional training to NRCS monitors to ensure they know what is required during onsite monitoring. Training should include common violations, CUA requirements, and common mistakes when filling out the annual monitoring worksheet.

Agency Response

Many NRCS State offices with large easement workloads, or that enlist the assistance of technical partners to supplement their easement monitoring efforts have already developed and delivered monitoring training. The NRCS National Headquarters (NHQ) office will supplement these trainings to form a national level core training to be presented to State office staffs and will be made available for monitoring partners. The estimated completion date is September 30, 2015.

OIG Position

We accept management decision for this recommendation.

Recommendation 3

Improve secondary reviews at the State office level to include identifying inaccurate information on the annual monitoring worksheet prior to entry into the National Easement Staging Tool (NEST).

Agency Response

Training materials developed to address Recommendation 2 will include procedures for quality assurance of monitoring data prior to entry into NEST. This estimated completion date is March 31, 2015.

NRCS State offices will incorporate provided NEST data quality assurance training into their easement monitoring data collection. This estimated completion date is September 30, 2015.

OIG Position

We accept management decision for this recommendation.

Recommendation 4

Develop formal procedures for the National office to ensure the consistency and quality of annual monitoring.

Agency Response

The NRCS National Headquarters (NHQ) office will conduct off-site reviews of Annual Monitoring Worksheets from several randomly chosen States and will generate and compare NEST data reports annually to detect and correct missing and inaccurate monitoring data. The estimated completion date is March 31, 2015.

OIG Position

We accept management decision for this recommendation.

Recommendation 5

Develop procedures for States to perform annual outreach to landowners on the terms of their easement agreements and ensure the States use the newly developed name and address report from NEST.

Agency Response

Template letters are currently available within NRCS manual exhibits for new landowners and for existing easement landowners reminding them of the terms of their easement agreements. These letters will be reviewed and updated for all easement programs, and will include references to NRCS' new annual monitoring cycle and procedures. States will be notified of the easement landowner address report that is now available in NEST. The estimated completion date is December 31, 2014.

OIG Position

We accept management decision for this recommendation.

Finding 2: NRCS Needs to Ensure the Quality and Completeness of NEST Data

During our review of NEST data, we found the data contained invalid, incorrect, and incomplete information. When we brought these issues to the attention of NRCS officials, they stated that field personnel made data entry errors that went undetected. They added that delays in entering monitoring data, which was due by the end of the fiscal year, may have caused the data extract OIG received to be incomplete. Additionally, we found that NRCS does not have all necessary edit checks to prevent inaccurate dates from being entered. Finally, OIG learned that, despite NRCS guidance, State officials told us they were not entering data on current CUAs until the CUA was renewed, which resulted in reliance on incorrect information. Because NRCS uses NEST for easement monitoring, corrective action, and financial reporting, it is vital that NEST data be as accurate and complete as possible. Without accurate and complete data, the quality of NRCS' monitoring capabilities is impaired.

Internal control guidance states that organizations should design controls over information systems to ensure data are valid and complete.¹⁰ Also, NRCS policy states that NEST is to be the official repository for all CUAs.¹¹

Based on our review of NEST data, we determined that NEST does not always have edit checks that will detect invalid or erroneous entries.¹² Our review of the data showed there were 6,100 current CUA records in NEST. However, our analysis of the data showed that records for 64 of these CUAs showed the expiration date as occurring prior to or on the approval date, which would essentially make the CUA immediately invalid. NRCS officials said they checked a sample of 22 of the 64 records we questioned and stated that 15 of the problems were caused by data entry errors. For the other seven, NRCS officials stated that there was not a CUA uploaded to NEST, so they could not determine the cause of the problem.¹³ OIG maintains that NRCS' ability to effectively track monitoring is hindered if the agency cannot rely on NEST. By developing edit checks that would prevent the entry of obviously erroneous data, NRCS could lessen the likelihood of field-level personnel entering inaccurate data.

OIG also found that NRCS data in NEST was not always complete. During our file review of the 75 easements,¹⁴ we noted 20 easement files contained a total of 35 current CUAs. Of the 35 current CUAs in the easement files, 16 of the CUAs had not yet been entered into NEST.

¹⁰Office of Management and Budget *Circular A-123*.

¹¹ Title 440, *Conservation Program Manual*, Part 527.1E, "Easement Common Provisions."

¹² In Finding 3, our review of NEST data found that approximately 19,500 of about 23,400 (83 percent) action items were not resolved and were past their "due by" date.

¹³ Uploading the scanned CUA is not required.

¹⁴ Our sample consisted of file reviews for 75 easements for fiscal years (FY) 2012 and 2013; however, we only performed site visits to 62 easements. During the audit phase, we had 13 easements where we only reviewed the easement files because the easements were enrolled in GRP, FRPP, or were already identified by NRCS as noncompliant. For the noncompliant easements, we found from our survey phase that the site visits only confirmed the noncompliance that NRCS had already identified and did not yield additional useful information for our audit of NRCS easement compliance.

NRCS State officials stated that they are not entering older CUAs into NEST until the CUA is renewed. However, NRCS policy indicates that all current CUAs are required to be entered into NEST, and NRCS officials agreed that the policy’s use of the term “current” is intended to include all “active” CUAs, which would include older CUAs as well. OIG maintains that NRCS needs to ensure that all States understand and follow agency policy regarding CUAs included in NEST, which will help NRCS to use NEST effectively to track easement monitoring.

OIG also found that data supporting the FY 2013 monitoring activities for 1,026 easements were incomplete. This would indicate that either the monitoring was not completed timely or the information was not entered into NEST timely. NRCS provided State offices with monthly reports on how many easements in NEST had received annual monitoring. We analyzed data records in NEST for 15,185 easements established prior to FY 2013, and we found that the data did not record any type of monitoring for 1,026 easements by the end of FY 2013.¹⁵ NRCS current policy calls for some type of monitoring every year, whether the monitoring is an onsite review, ownership review, or offsite review.¹⁶ This monitoring is to be completed by the end of the fiscal year. Our analysis of the 1,026 easements showed 35 States had at least 1 easement without evidence of monitoring occurring and 5 States had over 50, with 01 State having as many as 535 easements without monitoring data entered into NEST for FY 2013 (see Table 1 below).¹⁷

Table 1—The table below shows the classification of the number of easements without monitoring and the number of related States.

Number of easements without monitoring in FY 2013	Number of States
1-10	25
10-20	3
20-30	2
Above 50	5
TOTAL	35

NRCS national office officials told us they do not have formal procedures to verify the integrity of NEST data that would specifically identify these types of errors and omissions or edit checks to prevent the entry of invalid dates of CUAs. Nor do they have procedures to ensure State offices enter all currently active CUAs into NEST. We believe NRCS needs to develop procedures to ensure the integrity of NEST data to identify errors and omissions in easement monitoring and tracking information, incorporate edit checks in NEST to prevent inaccurate

¹⁵ NRCS officials attributed the number of easements without evidence of being monitored as most likely due to the timing of the data extraction, as of September 30, 2013, which was on the close of FY 2013 and the same end date for monitoring data entry.

¹⁶ An ownership review involves making landowner contact to verify ownership. An offsite review is a review of the most recent aerial photography available.

¹⁷ Staffing issues at one State may have contributed to the large number of easements that did not have monitoring entered in NEST.

dates from being entered into the CUA fields, and develop procedures to ensure that the State offices enter all CUAs into NEST.

Additionally, although computer system guidance states that organizations' information technology (IT) systems must have a current Assessment and Accreditation (A&A)¹⁸ and Authorization to Operate (ATO),¹⁹ we found the NEST system was operating under a larger system,²⁰ and the larger system's A&A and ATO had expired on October 1, 2013. Officials said this occurred because they prioritized other systems' renewals ahead of NEST. During our review in January 2014, NRCS obtained an A&A and ATO for NEST. OIG believes that NRCS must renew the A&A and ATO in a timely manner, not just for NEST, but for all systems. Allowing these certifications to expire reduces the assurance that the system is operating within IT guidelines.

OIG concludes that these cases indicate that NRCS needs to improve NEST's data quality and ensure that NEST has adequate data edit checks and complete data for categories like CUAs and annual monitoring. Without accurate and complete data, NRCS' monitoring efforts will be impaired.

Recommendation 6

Develop formal procedures for the national office to ensure the integrity of NEST data to identify errors and omissions in easement monitoring and tracking information and correct errors identified.

Agency Response

This issue will be addressed in its response to Recommendation 4. The estimated completion date for corrective action is September 30, 2015.

OIG Position

We accept management decision for this recommendation.

Recommendation 7

Incorporate edit checks in NEST to prevent inaccurate dates from being entered into the CUA fields. Also, identify additional edit checks in NEST that could improve the quality of data and implement those edit checks identified.

¹⁸ Oversight and Compliance Division Security Accreditation and Authorization for NEST and Draft Departmental Regulation: Security Assessment and Authorization.

¹⁹ *Departmental Manual 3555-001*, Chapter 11, Part 1, "Certification and Accreditation Methodology."

²⁰ The Conservation Program Delivery system.

Agency Response

NRCS will add automated internal controls through programming rules in NEST to reduce or prevent the entry of inaccurate data. The estimated completion date is March 31, 2016.

OIG Position

We accept management decision for this recommendation.

Recommendation 8

Develop procedures to ensure that the State offices enter all active CUAs into NEST.

Agency Response

Monitoring training mentioned in our response to Recommendation 2 will include CUA NEST data entry procedures. In addition, CUA procedures and related issues will be discussed, as needed, during the Easement Program Division's monthly national teleconferences. The estimated completion date is September 30, 2015.

OIG Position

We accept management decision for this recommendation.

Recommendation 9

Develop procedures to ensure timely renewal of the A&A and ATO documents for NEST in the future.

Agency Response

The Department of Agriculture is mandated to comply with the Federal Information Security Management Act requirements to implement a Continuous Monitoring process utilizing National Institute of Standards and Technology 800-137 – "Information Security Continuous Monitoring for Federal Information Systems and Organizations." NRCS is currently implementing this process for all agency systems, including NEST. This process consists of three tasks: (1) configuration management and control, (2) security control monitoring, and (3) status reporting and documentation. The purpose of Continuous Monitoring is to provide oversight and monitoring of the security controls in the information system on an ongoing basis, and to inform the Authorizing Official when changes occur that may impact the security of the system.

Continuous Monitoring activities ensure that secure system management, operation, and maintenance preserve an acceptable level of residual risk.

For the estimated completion date, NRCS stated: This process has been implemented.

OIG Position

We accept management decision for this recommendation.

Finding 3: NRCS Needs to Ensure Landowners are Timely Notified to Correct Noncompliances Found on Their Easements

We reviewed the files for 22 noncompliant easements and found 5 landowners who were not formally notified of the noncompliance. We found that the landowners for the other 17 noncompliant sample easements had either been notified of the violation or the noncompliance had been resolved. This occurred because NRCS procedures do not clearly define when the landowner should be notified of a violation or ensure that all noncompliance activity on easements is timely resolved. In addition, the NEST system has a feature for action items that should help the agency to ensure timely resolution of these matters. However, we found that NRCS does not effectively monitor this feature. As a result, landowners may continue to violate easement agreements without knowing of the problem.

Although NRCS procedures require documentation of written or verbal notification with the landowner concerning noncompliant activity, the procedures do not clearly define when the landowner should be notified. NRCS procedures state that “when a violation of the easement or a CUA is confirmed, the landowner must be given reasonable notice....”²¹ NRCS policy generally gives the land owner 30 days to correct the violation once notification is given;²² however, the policy does not define timeframes for the initial notification of the landowner regarding the noncompliance. As a result, we found that the State offices used varying time tables or did not send violation letters or otherwise communicate regarding the noncompliance.

As of January 2014, for the 22 noncompliant samples we reviewed, we found NRCS was inconsistent in the formal notification of the landowner where the monitor identified a possible violation on the easement. For the 17 noncompliant samples that had resolution or the landowner had been formally notified, we found the documentation of the notification ranged from less than 1 month to 49 months after the identification of the problem. Additionally, the noncompliant activity for the remaining five easements occurred in a time span as recently as 6 months and up to almost 10 years after identification; however, we did not find documentation in the easement files that a formal written or verbal notification ever occurred.

For the noncompliant easement without formal notification in almost 10 years, we found a noncompliant activity was identified in 2004. The situation concerned the boundary of the easement, and the landowner was wrongfully cropping portions of the easement. However, the situation was not resolved and, in 2012, the monitor’s review indicated that the problem still existed.²³ After our review and discussion with NRCS, the agency decided in December 2013 to make a boundary modification, meaning the easement boundary would be changed. Although evidence existed that some form of communication existed at times between NRCS and the landowner, the file did not have any type of formal documentation requiring the landowner to

²¹ Title 440, *Conservation Program Manual*, Part 514.67C, “Wetland Reserve Program.”

²² NRCS State offices are allowed to grant the land owners additional time for violation remediation as deemed necessary.

²³ The landowner was aware of the problem; however, NRCS took no action to stop the cropping.

take action, such as ceasing to crop the easement or otherwise resolving the situation. NRCS could have resolved this issue much earlier if its procedures had specific timeframes for landowner notification.

NRCS needs to consider establishing procedures that would require the State offices to more timely notify landowners when noncompliances are identified and be more vigilant in resolving those activities. OIG believes that timely notification and vigilant resolution is important, based on an incident found during a site visit. At that site visit, we found a trash dump on the easement, which included discarded 50 gallon drums.²⁴ The trash dump had not been previously identified as an issue, and we could not determine how long the trash had been on the easement (see Photo 1 below). If this was a situation where NRCS did not notify the landowner of the issue timely, the landowner or the responsible party could have continued dumping for possibly years. To avoid continued noncompliance activity, NRCS needs to ensure that landowners are notified timely.

Photo 1: The photo below shows a trash dump OIG identified during an onsite visit to an NRCS easement.



²⁴ OIG did not take exception to this issue because our review occurred before the monitor had a chance to perform the annual review for this easement. However, we followed up with NRCS officials to ensure they took proper action, and as a result of their timely action regarding this easement, NRCS resolved the violation as of October 2013.

To assist NRCS in timely monitoring noncompliance activities, NEST has a feature to remind the agency when action items are due. OIG noted that when NRCS enters information from the annual monitoring worksheet into NEST, the system will automatically populate a “due by” date for action items.²⁵ NRCS can also manually adjust the “due by” date to a more reasonable timeframe when appropriate. The NEST action item and “due by” date features should alert NRCS to concerns about an easement. This feature, when used properly, could be a tool that would help NRCS State and field office personnel to take appropriate actions, such as contacting the landowner and promptly correcting any deficiencies.

We found, however, that NRCS is not effectively monitoring action items in NEST to ensure timely resolution of these matters. Our review of NEST data found that approximately 19,500 of about 23,400 (83 percent) action items were not resolved and were past their “due by” date. Of the 726 action items that NEST showed as being resolved, we found that 521 (72 percent) were resolved after the “due by” date. NRCS has explained that NEST is a new system and the agency is learning how to better use the system. The national office does not have internal reviews to catch these issues. NRCS recently developed reports in NEST that will help both the national office and State offices track action items. OIG believes NRCS should develop a review process to ensure States are addressing and completing action items timely. OIG also believes that the high percentage of unresolved and resolved action items past their due date indicate that the agency is not monitoring or effectively using this feature in NEST. We concluded that, by more effectively using the NEST action item feature, NRCS could improve its noncompliance oversight.

Recommendation 10

Develop procedures giving State offices clear time frames or expectations for when landowners should be notified regarding noncompliant activities on their easements. Additionally, NRCS needs to improve its existing procedures to ensure that all noncompliance activity on easements is timely resolved.

Agency Response

NRCS will supplement its easement policy to include time frames within which NRCS State offices must notify landowners of noncompliant activities. Second part of Recommendation 10 is addressed in its response to Recommendation 11. The estimated completion date is December 31, 2014.

²⁵ Easement violations are action items in NEST; however, not all action items indicate an easement violation. For example, an action item could simply ask for the replacement of a boundary marker, which is not an easement violation.

OIG Position

We accept management decision for this recommendation.

Recommendation 11

Develop a review process for the national office to ensure States are addressing and completing action items timely and entering the necessary information into NEST, especially for noncompliant action items.

Agency Response

New NEST functionality is being developed for States to enter additional information regarding noncompliant activities for the NRCS NHQ office to monitor and assist with the correction of noncompliant activities. The estimated completion date is March 31, 2016.

OIG Position

We accept management decision for this recommendation.

Scope and Methodology

To meet our audit objectives, we interviewed NRCS officials at the national and State levels, as well as field personnel; reviewed files for judgmentally selected easements and conducted onsite visits of selected easements. We interviewed NRCS officials in Kansas, Missouri, South Dakota, Louisiana, and Colorado, as well as non-NRCS personnel who conducted monitoring on our sample easements.

We selected four NRCS easement programs for review: the WRP, FRPP, EWP-FEP, and GRP. During our audit, using data supplied by NRCS, we determined there were 17,565 easements enrolled in the programs, as of March 31, 2013. NRCS does not require easement cost to be entered into NEST, and, therefore, we could not determine a total value NRCS has invested in easements.

Initially, we judgmentally selected two States for the survey phase of our audit, based upon the varying types of easements in the States and their geographical location. We then judgmentally selected an additional three States to audit, based upon a large number of WRP and Emergency Watershed Protection for Floodplain Easements, a below average or zero noncompliance rate, or a high percentage of violations.

In the five States, we judgmentally selected a total of 75 easements for file review, based on the program the easement was enrolled in, whether NRCS identified noncompliance during monitoring, and the geographic location of the easement within the State. We conducted onsite visits to 62 of the 75 easements. During our onsite visits, we looked for compliance with easement terms and authorized uses, as well as boundary markings and potential violations. For the file review, we analyzed support for a variety of data, including the effective date of the easement, support for authorized activities, frequency and type of monitoring, and documentation regarding actions to correct violations of easement terms and other noted deficiencies. We reviewed the laws, regulations, and agency procedures to determine agency compliance.

We analyzed NEST data and reviewed the system's information and development process. We conducted an analysis of the NEST data fields available for use by NRCS personnel to assist in developing reports and other actions regarding easements. Our review of the system's documentation consisted of determining if NEST had the required A&A and ATO.

Below are more details on those sources we interviewed, visited, or otherwise used to conduct our audit:

- NRCS NHQ Officials—we discussed monitoring procedures and the use of NEST system data.

- NRCS State and field office officials—we discussed how State office personnel tracked easement monitoring, used NEST information, monitored violations, and asked what improvements to NEST they would like.

Our audit field work was conducted from June 2013 through March 2014. Our review concentrated on the 2012 and 2013 monitoring cycles. We expanded our review as necessary to include prior monitoring worksheets that were included in the files of easements that we had selected for review.

NRCS officials provided us with electronic data they use for tracking easement monitoring from their NEST computer system. While we did not perform a complete general and application review of this system, we relied on the data to make judgmental sample selections and to make determinations regarding the quality of the data. For our sample selections, we examined the data for items such as the easement program, State, type of monitoring, and whether or not the easement was in compliance. Additionally, we analyzed the data to determine whether the easements recorded in the NRCS NEST database also had proper data entry for current annual monitoring, CUAs, and the due dates for action items. We explained the results of this analysis within this audit report. Although we analyzed the data NRCS provided, our analysis was not intended to make overall conclusions regarding the NRCS' NEST computer system, and, therefore, we make no representation regarding the adequacy of their computer system.

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.

Abbreviations

A&A	Assessment and Accreditation
ATO	Approval to Operate
CUA	Compatible Use Authorization
EWP-FEP	Emergency Watershed Protection for Floodplain Easements Program
FRPP	Farm and Ranch Lands Protection Program
FY	Fiscal Year
GRP	Grasslands Reserve Program
IT	Information Technology
NEST	National Easement Staging Tool
NHQ	National Headquarters
NRCS	Natural Resources Conservation Service
OIG	Office of Inspector General
WRP	Wetlands Reserve Program

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



July 15, 2014

SUBJECT: SPA - Natural Resources Conservation Service (NRCS) Agency
Response – Audit Report – 10601-0002-31, NRCS Conservation Easement
Compliance

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

File Code: 340-7

Attached are NRCS' responses to Audit Report – 10601-0002-31, NRCS Conservation Easement Compliance. The responses address the actions taken and planned for audit recommendations 1 through 11.

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

/s/

Jason A. Weller
Chief

Attachment

Agency Responses - Audit Report Audit 10601-0002-31
NRCS Conservation Easement Compliance

Finding 1

NRCS Needs to Improve the Quality of Onsite Monitoring.

Recommendation 1

Add a place on the annual monitoring worksheet to document the expiration date for a Compatible Use Authorization (CUA), and instruct the monitors to include this information as part of their review process.

Agency Response

A section will be added to the Annual Monitoring Worksheet for monitors to enter active CUA data and distributed for use in fiscal year 2015.

ESTIMATED COMPLETION DATE: 12/31/14

Recommendation 2

Update and provide additional training to NRCS monitors to ensure they know what is required during onsite monitoring. Training should include common violations, CUA requirements, and common mistakes when filling out the annual monitoring worksheet.

Agency Response

Many NRCS State offices with large easement workloads, or that enlist the assistance of technical partners to supplement their easement monitoring efforts have already developed and delivered monitoring training. The NRCS National Headquarters (NHQ) office will supplement these trainings to form a national level core training to be presented to our State office staffs and will be made available for monitoring partners.

ESTIMATED COMPLETION DATE: 9/30/15

Recommendation 3

Improve secondary reviews at the State office level to include identifying inaccurate information on the annual monitoring worksheet prior to entry into the National Easement Staging Tool (NEST).

Agency Response

Training materials developed to address Recommendation 2 will include procedures for quality assurance of monitoring data prior to entry into NEST.

ESTIMATED COMPLETION DATE: 3/31/15

NRCS State offices will incorporate provided NEST data quality assurance training into their easement monitoring data collection.

ESTIMATED COMPLETION DATE: 9/30/15

Recommendation 4

Develop formal procedures for the NHQ office to ensure the consistency and quality of annual monitoring.

Agency Response

The NRCS NHQ office will conduct off-site reviews of Annual Monitoring Worksheets from several randomly chosen States and will generate and compare NEST data reports annually to detect and correct missing and inaccurate monitoring data.

ESTIMATED COMPLETION DATE: 3/31/15

Recommendation 5

Develop procedures for States to perform annual outreach to landowners on the terms of their easement agreements and ensure the States use the newly developed name and address report from NEST.

Agency Response

Template letters are currently available within NRCS manual exhibits for new landowners and for existing easement landowners reminding them of the terms of their easement agreements. These letters will be reviewed and updated for all easement programs, and will include references to NRCS' new annual monitoring cycle and procedures. States will be notified of the easement landowner address report that is now available in NEST.

ESTIMATED COMPLETION DATE: 12/31/14

Finding 2

NRCS Needs to Ensure the Quality and Completeness of NEST Data.

Recommendation 6

Develop formal procedures for the NHQ office to ensure the integrity of NEST data to identify errors and omissions in easement monitoring and tracking information, and correct errors identified.

Agency Response

This issue will be addressed in our response to Recommendation 4.

ESTIMATED COMPLETION DATE: 9/30/15

Recommendation 7

Incorporate edit checks in NEST to prevent inaccurate dates from being entered into the CUA fields. Also, identify additional edit checks in NEST that could improve the quality of data and implement those edit checks identified.

Agency Response

NRCS will add automated internal controls through programming rules in NEST to reduce or prevent the entry of inaccurate data.

ESTIMATED COMPLETION DATE: 3/31/16

Recommendation 8

Develop procedures to ensure that the State offices enter all active CUAs into NEST.

Agency Response

Monitoring training mentioned in our response to Recommendation 2 will include CUA NEST data entry procedures. In addition, CUA procedures and related issues will be discussed, as needed, during the Easement Program Division's monthly national teleconferences.

ESTIMATED COMPLETION DATE: 9/30/2015

Recommendation 9

Develop procedures to ensure timely renewal of the Assessment and Accreditation and Approval to Operate documents for NEST in the future.

Agency Response

The Department of Agriculture is mandated to comply with the Federal Information Security Management Act requirements to implement a Continuous Monitoring process utilizing National Institute of Standards and Technology 800-137 – "Information Security Continuous Monitoring for Federal Information Systems and Organizations." NRCS is currently implementing this process for all agency systems, including NEST. This process consists of three tasks: (1) configuration management and control, (2) security control monitoring, and (3) status reporting and documentation. The purpose of Continuous Monitoring is to provide oversight and monitoring of the security controls in the information system on an ongoing basis, and to inform the Authorizing Official when changes occur that may impact the security of the system. Continuous Monitoring activities ensure that secure system management, operation, and maintenance preserve an acceptable level of residual risk.

ESTIMATED COMPLETION DATE: This process has been implemented.

Finding 3

NRCS Needs to Ensure Landowners are Timely Notified to Correct Non-compliances Found on their Easements

Recommendation 10

Develop procedures giving State offices clear time frames or expectations when landowners should be notified regarding noncompliant activities on their easements. Additionally, NRCS needs to improve its existing procedures to ensure that all noncompliance activity on easements is timely resolved.

Agency Response

NRCS will supplement its easement policy to include time frames within which NRCS State offices must notify landowners of noncompliant activities. Second part of Recommendation 10 is addressed in our response to Recommendation 11.

ESTIMATED COMPLETION DATE: 12/31/14

Recommendation 11

Develop a review process for the NHQ office to ensure States are addressing and completing action items timely, and entering the necessary information into NEST, especially for noncompliant action items.

Agency Response

New NEST functionality is being developed for States to enter additional information regarding noncompliant activities for the NRCS NHQ office to monitor and assist with the correction of noncompliant activities.

ESTIMATED COMPLETION DATE: 3/31/16

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