

Part 528 – Agricultural Conservation Easement Program (ACEP)

Subpart Q – Special Enrollment Options

528.160 Overview

This subpart provides implementation guidance for the Wetland Reserve Enhancement Partnership (WREP) enrollment option and the Reservation of Grazing Rights enrollment option.

528.161 Wetland Reserve Enhancement Partnership (WREP) Enrollment

A. General

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

B. Program Purpose and Objectives

The purpose of WREP enrollment is to target and leverage resources to address high-priority wetland protection, restoration, and enhancement objectives through agreements with States (including a political subdivision or agency of a State), nongovernmental organizations, and Indian Tribes (7 CFR Section 1468.35). Under WREP enrollment, State Conservationists enter into agreements with eligible partners. Additionally, NRCS may use WREP enrollment to obtain assistance with easement management activities from those who have the appropriate expertise, as determined by the Chief of NRCS.

C. NRCS Responsibilities

The responsibilities for WREP are the same as the regular ACEP-WRE with the following exceptions:

(i) National Headquarters (NHQ)

In addition to ACEP-WRE responsibilities, national leadership for WREP enrollment is provided by the Chief and the Chief's designee. The Chief will—

- Determine the funding level for WREP proposals on a periodic basis and will notify State Conservationists about—
 - The level of funding available for WREP proposals in that fiscal year.
 - The priorities for funding.
 - Required level of partner matching funds.
 - Ranking criteria.
 - Additional criteria, as determined by the Chief.
- Select proposals for funding.
- Work with State Conservationists and partners to develop guidelines for implementing selected proposals.

(ii) State Offices

- In addition to ACEP-WRE responsibilities, State leadership for WREP enrollment is provided by the State Conservationist. The State Conservationist will—
 - Upon notice by NHQ, announce availability for submission of WREP project proposals.
 - Develop WREP partnership project proposals with eligible partners in their State.
 - Coordinate with neighboring States on proposals that include more than one State, including designation of a lead state for the proposal.
 - Submit project proposals to NHQ when project proposals are requested.
- Once a project has been selected by the Chief for funding, the State Conservationist will—
 - Publish a signup announcement to make information regarding availability of WREP funding to the public in the selected proposal areas.
 - Work with partners to develop a partnership agreement and ensure that it is consistent with the announcement of funding, the proposal, and the ACEP regulations.
 - Ensure all program eligibility criteria and policies are met for all applications and enrollments that may result.

(iii) Field Offices and ACEP-WRE Teams

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

D. Partner Responsibilities

Partner responsibilities include—

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

528.162 Reservation of Grazing Rights Option

A. General

- (1) The reservation of grazing rights is a separate enrollment option available under the ACEP-WRE component. As a component of ACEP-WRE, NRCS will implement a reservation of grazing rights enrollment option where landowner may reserve the grazing rights on the lands subject to the easement or 30-year contract. This option is only available for unique wetland ecosystems where grazing is the appropriate vegetation management or disturbance activity tool needed to maintain the long-term viability of the unique attributes of that particular wetland ecosystem. Grazing is the only additional right that may be reserved to the landowner and the extent of the reserved grazing right is identified in Form NRCS-LTP-33, “Warranty Easement Deed with Reservation of Grazing Rights,” and is further described in the Exhibit E to the deed and the grazing management plan that will be a component of the wetland reserve plan of operations (WRPO).
- (2) A State Conservationist, in consultation with the State Technical Committee, may consider offering the reservation of grazing rights enrollment option within their State. If enrollment will be offered, the State Conservationist will identify the unique wetland ecosystems that will be made part of the enrollment effort and the geographic extent within which the unique wetland ecosystems exist that will be designated.
- (3) Under the reservation of grazing rights enrollment option, NRCS works directly with landowners. Landowners will submit applications directly to NRCS once a reservation of grazing rights enrollment area has been announced. Landowners applying for this enrollment option in a selected reserved rights area must meet the eligibility requirements in sections 528.104. Lands that are enrolled under this option must meet the ACEP-WRE eligibility requirements in section 528.105.
- (4) Lands where woody vegetation was a dominant part of the historic plant community are not eligible for the reserved rights enrollment option unless a waiver is granted by the national ACEP-WRE manager. Examples include woody riparian, bottomland hardwoods, or other forested wetland systems.
- (5) Easements and 30-year contracts developed through the reserved rights enrollment process have the same enrollment, acquisition, restoration, management, monitoring, and maintenance requirements as standard ACEP-WRE. Wetland restoration and enhancement actions will continue to be designed to maximize wildlife habitat values in accordance with the ACEP regulation, 7 CFR Part 1468, and NRCS standards and specifications. These practices, components, measures, and activities will be documented in the WRPO.
- (6) NRCS may offer a 30-year easement, permanent easement, or 30-year contract for the reserved rights enrollment option in selected areas. This enrollment option may only be offered where the State Conservationist determines that the reservation and use of grazing rights—
 - (i) Is compatible with the land subject to the easement or 30-year contract.
 - (ii) Is necessary for the restoration and management of the land subject to the easement or 30-year contract.
 - (iii) Is consistent with the long-term wetland protection and enhancement goals for which the easement or 30-year contract was established.
 - (iv) Complies with a WRPO grazing management plan developed by NRCS in consultation with FWS that outlines the location, timing, intensity, frequency, and duration of the grazing.
 - (v) Supports the habitat needs of the target species, including plant height, structure and spatial considerations for nesting, food, cover, or brood-rearing habitat.

- (7) The landowner must acknowledge acceptance of the terms and conditions of the grazing right by signing the WRPO grazing management plan prior to easement closing or contract execution by NRCS. Monitoring of the grazing effects on the habitat objectives will determine if adjustments to the grazing management plan are necessary. Additional grazing, as determined by NRCS based on site conditions, can only be provided through an approved compatible use authorization.

B. NRCS Responsibilities

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

(i) NHQ

In addition to ACEP-WRE responsibilities, national leadership for the reserved rights enrollment option is provided by the Chief and the Chief's designee. The Chief will—

- Determine the reduction in the value of the retained grazing rights.
- Develop guidelines for appropriate use of the reservation of grazing rights enrollment option.
- Make available a Form NRCS-LTP-33, "Warranty Easement Deed with Reservation of Grazing Rights" template and a template exhibit E.
- Review and approve the exhibit E version that will be used in each grazing reserved rights enrollment area.

(ii) Regional Conservationists (RCs)

In addition to ACEP-WRE responsibilities, Regional Conservationists provide leadership to the States regarding implementation of the reserved rights enrollment option.

(iii) State Offices

In addition to ACEP-WRE responsibilities, State leadership for the reserved rights enrollment option is provided by the State Conservationist. The State Conservationist will—

- Determine if and where the reservation of grazing rights enrollment option will be offered in that State and the level of funding available.

Note: No special funds will be allocated for this enrollment option of ACEP-WRE. Applications will be funded from the State's annual ACEP-WRE allocation. Up to 50 percent of the State's annual allocation may be used for this enrollment option. Enrollment obligations in excess of 50 percent of the State's annual allocation must be approved by the Deputy Chief for Programs.

- Work with the State Technical Committee to provide recommendations on unique wetland ecosystems for participation in this enrollment option, including the types of grazing management conditions that contribute to the wetland functions and values of the unique wetland ecosystem.
- Complete exhibit E to the Form NRCS-LTP-33, "Warranty Easement Deed with Reservation of Grazing Rights" for each area selected, based upon the template version provided by NHQ, and submit the exhibit E to NHQ for review and approval.
- Provide public notice of the availability of the reserved rights enrollment option and the Form NRCS-LTP-33, "Warranty Easement Deed with Reservation of Grazing Rights."

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- Review and approve the WRPO grazing management plan. The State Conservationist may delegate this authority to the State ACEP-WRE manager or coordinator.
 - Develop guidelines for the development of grazing management plans that will be incorporated into the WRPO.
 - Ensure appropriate implementation of the reservation of grazing rights enrollment option. This option will only be offered where grazing is necessary to achieve the desired wetland functions and values of a unique wetland type on the ACEP-WRE easement or 30-year contract area.
 - Certify, by signing the ACEP-WRE easement or contract, that the reservation of the grazing right is compatible with the land subject to the easement or 30-year contract.
 - Assess grazing impacts to determine if additional grazing, as determined by NRCS based on site conditions, can be provided through an approved compatible use authorization. (See subpart P of this manual for guidance on compatible use.)
- (iv) Field Offices and ACEP-WRE Teams

In addition to ACEP-WRE responsibilities, responsibilities of the designated conservationists or local NRCS representative, as determined by the State Conservationist, are to—

- Coordinate with FWS, State wildlife agency, conservation district (CD), and other appropriate agencies, organizations, or cooperating partners to market and deliver the reservation of grazing rights enrollment option.
- Determine site eligibility based on appropriate ecological conditions and plant communities historically represented within the proposed easement or contract area.
- Develop the WRPO grazing management plan. The terms and conditions of the grazing management plan must be based upon guidance provided by the State office and developed in consultation with FWS and other partners as appropriate and will be compatible with the habitat and species goals and objectives.
- Develop WRPO modifications, as necessary. (See subpart O of this manual for guidance on WRPO and contract modifications.)
- Provide onsite annual monitoring for the first 3 years of the easement or contract. Due to the nature of the enrollment option, onsite monitoring will be necessary to fully gauge the habitat response to the prescribed grazing regime. Monitoring will be performed at critical times to measure the success in attaining the identified habitat and species goals and objectives.

C. FWS Responsibilities

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

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

D. Compensation

Compensation for easements or 30-year contracts entered into under the reservation of grazing rights enrollment option will be based on the method and values determined in accordance with guidance in this part, except that the geographic area rate cap (GARC) determined for regular ACEP-WRE is reduced by an amount representative of the value of the retained grazing rights, as determined by the Chief.

E. Authorized Funding Levels

- (1) NRCS may provide assistance for establishing or implementing practices, measures, or activities specified in the final WRPO. These practices and components must be necessary to achieve the desired wetland functions and values and will be provided at the conventional ACEP-WRE rate (up to 100 percent for permanent easements and up to 75 percent for nonpermanent enrollments).
- (2) Financial assistance is authorized for necessary wildlife friendly fences detailed in the final WRPO grazing management plan. Additionally, financial assistance is authorized to modify existing fences to wildlife-friendly specifications. Livestock watering facilities as part of the final WRPO grazing management plan are also authorized for financial assistance.