



UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

Washington, D.C. 20250



August 19, 2009

REPLY TO

ATTN OF: 10703-1-KC (1)

TO: Dave White
Chief
Natural Resources Conservation Service

ATTN: Katherine C. Gugulis
Director
Operations Management and Oversight Division

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

SUBJECT: American Recovery and Reinvestment Act - Emergency Watershed Protection
Program Floodplain Easements

The American Recovery and Reinvestment Act of 2009 (Recovery Act) provided \$145 million to the Department of Agriculture's Natural Resources Conservation Service (NRCS) so that the agency, through its Emergency Watershed Protection program, could purchase easements on floodplain lands that have been recently flooded or have a history of repeated flooding.

In enacting the Recovery Act, Congress emphasized the need for accountability and transparency in the expenditure of these funds. Further, on April 3, 2009, the Office of Management and Budget issued "Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009" requiring Federal agencies to establish rigorous internal controls, oversight mechanisms, and other approaches to meet the accountability objectives of the Recovery Act. As mandated by the Recovery Act, the role of the Office of Inspector General (OIG) is to oversee agency activities and to ensure that agencies expend funds in a manner that minimizes the risk of improper use.

We initiated this review to determine if NRCS had adequate controls for implementing the Emergency Watershed Protection program's floodplain easement (EWPP-FPE) component, which allows NRCS to acquire permanent easements on private land, or certain land owned by State and local governments. This memorandum is one in a series that will report on our oversight activities regarding EWPP-FPE. Issues identified in these memoranda will be compiled into a final report at the conclusion of the audit.

In June 2009, NRCS received 4,252 applications for flood protection easements that would have totaled \$1.4 billion—it approved 289 applications totaling \$138 million. Because some applicants have homes on tracts of land that were approved for easements, NRCS agreed to provide funding to the applicant to pay for the value of the home so that the mortgage could be repaid, the lien could be released, and the easement placed on the land. Our review of these approved applications noted three potential problems.

NRCS Purchased Easements on Small Tracts of Land

Many of the applications approved by NRCS were for the purchase of small tracts of land, and appeared to be for the purchase and removal of flood-prone or damaged houses. Of the 30 such approved applications in Alaska, Ohio, and West Virginia, the land associated with these applications ranged from one tenth of an acre to four acres, and averaged about 1.1 acres. The average total cost incurred by NRCS for these applications was \$151,052 or about \$132,115 per acre.

State	Number Identified	Average Cost Per Application	Average Cost Per Acre
Alaska	3	\$365,486	\$135,365
Ohio	9	\$227,266	\$227,266
West Virginia	18	\$77,206	\$80,797

While NRCS believes that using these funds to purchase small parcels of land is not prohibited, OIG is concerned about the appearance of purchasing such small-sized easements at such high costs. Generally, NRCS has tended to purchase much larger pieces of land for easements. Doing so allows the agency to more significantly affect flood patterns in the area where the program is operating.

NRCS Determined the Value of the Homes Using the Homes' Tax Assessed Value

Although NRCS established a procedure for determining the value of land for easements, it did not have a procedure for valuation of the homes on these easements.¹ In lieu of not having such procedures, the agency elected to use the property tax assessment value for determining the valuation of homes.² The value of the home was used in determining the total estimated restoration cost, in addition to the purchase price of the easement.

We question whether using tax assessment values are appropriate since local jurisdictions can vary widely in how they assess homes. Assessment values depend on a number of factors, including when the assessment was made, whether accurate information about the property was used, and the differences among specific assessment procedures. In addition, the period between assessments varies by jurisdiction. Some taxing authorities

¹ According to the EWPP-FPE procedures, the landowner receives the lowest of the following values: a value based on an area-wide market analysis or survey; the amount corresponding to a geographical area rate cap, as determined by the Secretary; or the offer made by the landowner.
² A home's "tax assessed value" is defined as the worth or value of a piece of property as determined by the taxing authority for the purpose of levying an ad valorem (property) tax.

might conduct full assessments every 6 years, for instance, but update their records annually to account for new homes or building improvements. Others might update more frequently.

For example, for one property in Alaska, NRCS has estimated it will pay \$476,190 for the home and \$6,820 for the land easement payment. After this 2.2 acre property was flooded in 2006 and 2007, the house had to be temporarily abandoned and the land was designated as a flood zone. The tax assessed value of the home and other improvements was \$366,300, but the costs for demolition and removal of the house and restoration of the floodplain were estimated at \$109,890 for a total estimated restoration cost of \$476,190. Given the state of the house and land, and the method used to determine the value of the house, we question whether it is a prudent use of Recovery Act funds to spend 99 percent of funds on the acquisition and demolition of the home and only 1 percent on the easement itself.

NRCS Needs to Establish Procedures for Purchasing Homes as Part of Flood Protection Easements

Overall, NRCS was relatively inexperienced in dealing with homes located on these small easements and did not have procedures to anticipate problems that would likely arise.

- NRCS did not consider whether applicants had received insurance payments related to damage to their properties or reimbursement from other sources (FEMA or State and local Governments). NRCS officials indicated that they had not considered this issue but should obtain this information.
- NRCS did not consider how to deal with landowners who had acquired the property after it was damaged. If the current property owner purchased the damaged home after the flood, then NRCS should consider that the amount paid to the homeowner as part of restoration costs should not exceed the home's market value after damage.

In Ohio, we found that NRCS planned to compensate landowners for the value of their homes using easement payments instead of restoration payments.³ After we discussed this issue with NRCS officials, they agreed that the payments related to the value of existing structures should not be made through an easement payment but rather through restoration funding. They stated that they would instruct the Ohio State NRCS Office to correct the nine applications by moving the payment amounts related to the value of existing structures to restoration costs.

³ According to EWPP-FPE procedures, the cost to purchase, demolish, and remove any structure on the land with the easement should be considered restoration costs, as well as any costs to restore the land. Easement payments would include only the cost to purchase the easement on the land.

Given NRCS' inexperience with easements on small home sites, we maintain that the agency should improve its procedures and oversight for easements of this sort. We are recommending that NRCS:

1. Revisit the policy of purchasing easements on small parcels of land where there are high costs regarding the acquisition and demolition costs for homes whether it is a prudent use of Recovery Act funds.
2. Establish comprehensive EWPP-FPE procedures that address purchasing easements on small parcels of land where acquisition and demolition costs for homes are the primary cost.
3. Follow up with NRCS State offices to correct EWPP-FPE applications and to move costs associated with homes and other improvements to restoration costs, not easement payment amounts.
4. Identify all EWPP-FPE approved applications where homes are the primary restoration cost, perform a review of each application and make the appropriate corrections.

Please provide a written response to this letter within 5 days, outlining your proposed actions. If you have any questions, please contact me at 720-6945, or have a member of your staff contact Ernest M. Hayashi, Director, Farm and Foreign Agricultural Division, at 720-2887.



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

September 8, 2009

SUBJECT: Response to Office of Inspector General Fast
Report 10703-1-KC(1), American Recovery and
Reinvestment Act – Emergency Watershed Protection
Program Floodplain Easements (EWPP-FPE)

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

This memorandum is in response to the Office of Inspector General (OIG) Fast Report 10703-1-KC(1), received August 24, 2009. Your report raises concerns whether the Natural Resources Conservation Service (NRCS) has adequate controls for implementing the EWPP-FPE on eligible lands that have existing structures.

The statute and regulations provide full authority to NRCS to purchase FPEs from landowners on a voluntary basis, and to restore the natural hydrology and native vegetation on these easements. The regulation states: “The objective of the EWP program is to assist ... in implementing emergency recovery measures for runoff retardation and erosion prevention to relieve imminent hazards to life and property.” (7 CFR § 624.2) The regulation further states: “The EWP program is designed for emergency recovery work, including the purchase of FPE.” (7 CFR § 624.3)

The Preamble to the Final Rule (April 4, 2005) provides a thorough refutation to the issues mentioned in the Fast Report. The Preamble states: “Under the proposed rule, NRCS expanded the potential acquisition of FPEs to include non-agricultural lands. Structures within the FPE may be demolished or relocated outside the 100-year floodplain, whichever costs less. This element of the proposed rule would tend to increase program costs in the short-term, but reduce costs to the Federal, State and local government in the long-term, as people and structures in non-agricultural areas are relocated out of the floodplain. In addition, as more acreage is returned to open space, the floodplain will function in a more natural state with compounding long-term benefits. The agency has adopted the proposed provision in the final rule without change.”

NRCS used national and State ranking criteria to score the applications for the ARRA-funded FPE program. From the list of more than 4,200 applications, the Secretary selected 289 projects that will provide the greatest public and environmental benefits per dollar expended. When completed, all 289 projects will be restored, functioning floodplain ecosystems, and will reduce the need for public

and private funding for future, repetitive flood damage costs. With the enrollment of these parcels and the removal of the structures on the subject parcels, the cost of future repairs to these sites for other Federal, State or local units of government will be virtually eliminated. In addition, costs to the private sector, such as insurance companies and financial institutions, will be eliminated.

While only 10 percent of the projects selected include restoration involving the removal of a structure, restoring the floodplain on these sites will greatly reduce the adverse environmental concerns associated with flooded dwellings, such as sewage, household wastes, and a variety of hazardous chemicals and materials.

Regarding the recommendations in your report:

1. NRCS reviewed the policies authorizing the purchase of FPEs on land with existing structures, and determined that the purposes of EWPP are furthered by these policies for the reasons identified in the preamble of the final rule. NRCS will continue to administer the EWPP-FPE program in conformance with the statute and regulation, and will continue to use the program to reduce future costs to Federal, State and local units of government and the private sector, as well as the taxpayer.
2. NRCS concurs that the establishment of comprehensive procedures will further the accountability and transparency principles of ARRA in general, and EWP specifically. NRCS will establish standard operating procedures for purchasing easements on small parcels with structures and incorporate these procedures into the EWPP-FPE manual.
3. NRCS concurs that the agency should handle the costs associated with the value of structures and their demolition and removal in a consistent manner. State staff made corrections and listed EWPP-FPE costs associated with structures and other improvements as restoration costs.
4. NRCS will continue to administer the EWPP-FPE program in conformance with all appropriate statutes and regulations, and will use our oversight and evaluation process to ensure the validity of all funded EWPP-FPE applications that were funded.

/s/ Virginia Murphy (for)

Dave White
Chief

Robert W. Young
Page 3

cc:

Virginia (Ginger) L. Murphy, Associate Chief, NRCS, Washington, DC

Lincoln E. Burton, Acting Deputy Chief for Programs, NRCS, Washington, DC

Lesia Reed, Acting Deputy Chief for Strategic Planning and Accountability, NRCS,
Washington, DC

Bruce Julian, Special Assistant to the Chief, NRCS, Washington, DC

Ross Lahren, Acting Director, Easement Programs Division, NRCS, Washington, DC

Mike Martinez, Special Assistant to the Chief, NRCS, Washington, DC

Katherine C. Gugulis, Director, Operations Management and Oversight Division, NRCS,
Washington, DC

John Rissler, Acting Compliance Team Leader, Operations Management and Oversight Division,
NRCS, Washington, DC