



United States Department of the Interior

OFFICE OF THE SOLICITOR

OCT 1 6 1996

Memorandum

To: Director, Fish and Wildlife Service
Assistant Director - Ecological Services
Assistant Director - Refuges and Wildlife

From: Assistant Solicitor - Fish and Wildlife

Subject: Memorandum of Understanding (MOU) between the Fish and Wildlife Service and the Natural Resources Conservation Service regarding the Wetlands Reserve Program

We have reviewed and surnamed the MOU referred to above, and believe that it is an appropriate underlying agreement for utilizing the resources of both the Fish and Wildlife Service (FWS) and the Natural Resources Conservation Service (NRCS) to achieve important common statutory goals. Provided that several points are clearly understood by the Fish and Wildlife Service in implementing this agreement, we find no legal impediments to the transactions contemplated by it.

The basic concept of the MOU is that the NRCS, an agency of the Department of Agriculture, and the FWS are going to utilize their separate and independent authorities in a cooperative manner to achieve wetland resource protection. Private participants will also be assured of receiving 100% of fair market value (FMV) and the protections afforded by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) with regard to transactions consummated in accord with this MOU by the FWS. The Service should observe the following legal principles in implementing this agreement:

1. The total acquisition price paid to a citizen for the acquisition of property or an interest therein purchased pursuant to the terms of this MOU shall be at least the FMV in accordance with requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. (P.L. 91-646).

2. The Fish and Wildlife Service may pay more than the appraised value to acquire those properties and interests therein that represent its part of the cooperative transactions contemplated under the MOU. NRCS has uniformly set the price that it will pay for WRP easements at 75% of the value. It has also chosen to establish this value through an agriculture perspective. As a result, NRCS may in fact be paying more or less than a traditional FMV for its interests. FWS is committed to ensuring that the full transaction by both NRCS and FWS represents at least 100% of FMV.

Accordingly, the price actually paid by the FWS for its interest may reflect an additional amount to ensure that the total transaction represents at least 100% of FMV. In our view, the overall value of this program and MOU to the mission of the Fish and Wildlife Service fully justifies this approach. In some cases, such as acquisitions utilizing Land and Water Conservation Act funding, there may be Congressional notification requirements if acquisition costs are above the appraised value of a property.

3. Under the "Third Party Cooperation" heading outlined in Section E of the agreement, only funds available for grants under the Fish and Wildlife Coordination Act may be utilized to assist in the acquisition of any property interest held by any party other than the Department of the Interior. Funds appropriated for Fish and Wildlife land acquisition can only be utilized to acquire interests in land to be held by the Department of the Interior. The FWS is only authorized to expend its appropriated land acquisition funds on the interests in land which it acquires. Under no circumstances is such appropriated acquisition funding to be expended to purchase interests held by the Department of Agriculture.

Attachment