



OFFICE OF  
**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

# **U.S. FISH AND WILDLIFE SERVICE CONSERVATION EASEMENT ENFORCEMENT AND MONITORING**

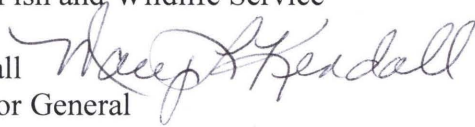


OFFICE OF  
**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

**JAN 09 2012**

Memorandum

To: Daniel Ashe  
Director, U.S. Fish and Wildlife Service

From: Mary L. Kendall   
Acting Inspector General

Subject: Evaluation Report – U.S. Fish and Wildlife Service Conservation Easement  
Monitoring and Enforcement  
Report No. WR-EV-FWS-0003-2011

This memorandum transmits the findings of our evaluation report of the U.S. Fish and Wildlife Service's (FWS) ability to protect conservation easement assets through effective monitoring and enforcement. We found that FWS is making an effort to monitor and enforce its inventory of conservation easements. FWS is constrained, however, by a variety of factors. These include the varying level of its resources, competing Federal incentives, an absence of service-wide monitoring and enforcement guidance, and insufficient documentation of easement monitoring.

We believe that FWS needs to address these issues to ensure that the advantages promised by its conservation easements actually benefit the intended habitat and wildlife and protect the public's investment.

To help FWS improve its conservation easement monitoring and enforcement activities, we included six recommendations in our draft report. Based on your November 15, 2011 response to our draft report, we consider three of the recommendations to be unresolved and the other three resolved but not implemented.

The legislation, as amended, creating the Office of Inspector General requires that we report to Congress semiannually on all audit report issues, actions taken to implement our recommendations, and recommendations that have not been implemented.

Please provide us with your written response to this report within 30 days. The response should provide information on actions taken or planned to address the unresolved recommendations, as well as target dates and title(s) of the official(s) responsible for implementation. Please address your response to:

Ms. Kimberly Elmore  
Assistant Inspector General for Audits, Inspections, and Evaluations  
U.S. Department of the Interior  
Office of Inspector General  
MS 4428 - MIB  
1849 C Street, NW.  
Washington, DC 20240

If you have any questions regarding this memorandum or the subject report, please do not hesitate to contact me at 202-208-5745.

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## Results in Brief

Conservation easements are a tool used by the U.S. Fish and Wildlife Service (FWS) to keep agricultural lands in production, while also providing conservation benefits. Its inventory of conservation easements already numbering in the tens of thousands, FWS acquires an average of around 300 additional conservation easements each year. With this in mind, we conducted an evaluation to determine if FWS is protecting conservation easements through adequate monitoring and enforcement.

FWS is making an effort to monitor its large inventory of conservation easements and enforce easement provisions to preserve the conservation and habitat benefits they provide. Easement monitoring and enforcement efforts, however, are highly variable from one location to another. Further, USDA programs and other factors create financial incentives for land owners to violate easement provisions. In addition, FWS is in need of bureau-wide guidance for administering, monitoring, and enforcing easements. Finally, easement monitoring efforts are poorly documented. We believe that FWS needs to address these issues to ensure that the advantages promised by current FWS conservation easements, as well as future acquisitions, actually benefit intended habitat and wildlife, and protect taxpayer investment.

In June 2011, we issued a Notice of Potential Finding and Recommendation (NPFR) to the FWS chief law enforcement official. We indicated the need for FWS to conduct a workload and workforce analysis of its conservation easement monitoring and enforcement responsibilities. The purpose of these analyses is to help FWS determine the resources it needs to detect, deter, and prosecute easement violations. FWS responded to the NPFR, stating that it concurred with our recommendation and that it will take the necessary steps to conduct a workload and work force analysis.

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# Introduction

## Objective

Our objective was to determine if the U.S. Fish and Wildlife Service (FWS) is protecting conservation easement assets through effective monitoring and enforcement efforts.

## Background

Conservation easements are cost-effective tools through which private landowners and the Federal Government enter into mutually beneficial agreements. These legal agreements keep working agricultural lands in production while delivering conservation benefits to the affected habitat and wildlife. Conservation easements allow the private landowner to retain ownership of the land that is under the conservation easement with certain binding restrictions on specified activities on that portion of the property.

FWS's easement program benefits habitat, wildlife, and landowners and is a prime example of a Federal program that works cooperatively on multiple levels. FWS manages 32,848 conservation easements, 95 percent of which are in Regions 3 and 6.<sup>1</sup>

Conservation easements are beneficial in that they are perpetual and typically cost a fraction of what it would cost to acquire absolute ownership of the land. The cost savings, however, varies depending on the market value and the restrictions imposed. Another benefit is that wetlands and grasslands are preserved in their original states. In addition, landowners continue to pay taxes on their easement property.

FWS considers the vast majority of its conservation easements minimally restrictive. This type of easement takes very few rights away from a property owner and has the least impact on the value of their property in comparison to other easements. Examples of minimally restrictive easements include the wetland, grassland, and habitat easements used to protect migratory waterfowl habitat in Regions 3 and 6.

Wetland easements are permanent agreements in which a landowner receives a lump sum payment in exchange for agreeing not to drain, burn, level, or fill wetlands. Grassland easements are permanent agreements in which a landowner receives a lump sum payment in exchange for agreeing to keep their land in grass, thus not cultivating. Mowing, haying, and grass seed harvesting for these easements must be delayed until after July 15 each year. Habitat easements are similar to grassland easements.

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<sup>1</sup> Region 3 includes the states of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Region 6 includes the states of Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

A restrictive conservation easement, on the other hand, significantly limits the property owner’s use of the property. For example, a restrictive easement may prohibit any disturbance of the soil or vegetation, even haying or grazing. The property owner retains fewer rights, and the easement has a significant impact on the value of the property.

FWS also manages conservation easements obtained from the Farm Service Agency, successor to the Farmers Home Administration (FmHA). The easements were transferred to FWS for management and oversight responsibility in accordance with a 1987 interagency agreement.

Since 1921, FWS has spent \$397 million to purchase conservation easements. FWS continues to acquire additional conservation easements. In the last 5 fiscal years, FWS acquired 5 percent of its easements or 1,744 easements, at a cost of \$95.6 million. At 24 percent, this is almost a quarter of total acquisition funds spent since inception.

### **FWS Easements Acquired from 2006 to 2010**

<b>Year</b>	<b>Number of Easements</b>	<b>Acquisition Costs</b>
2006	392	\$16,300,529
2007	369	\$16,064,971
2008	284	\$18,633,880
2009	330	\$15,246,059
2010	369	\$29,397,806
<b>Total</b>	<b>1,744</b>	<b>\$95,643,245</b>

Figure 1. The number of easements acquired by FWS from 2006 to 2010 and the total cost for each year.

The Land and Water Conservation Fund Act and Migratory Bird Conservation Act provide the primary authority for conservation easement acquisition. The Land and Water Conservation Fund Act permits acquisitions for the National Wildlife Refuge System. This includes acquisitions for the protection of endangered and threatened species. It also includes acquisition of areas authorized by certain sections of the Refuge Recreation Act, the Fish and Wildlife Act of 1956, and other specific acts of Congress. The Migratory Bird Conservation Act authorizes FWS to use funds generated from Federal Migratory Bird Hunting and Conservation Stamps and from some appropriations received in the early years of the program to acquire important migratory bird areas for migration, breeding, and wintering. The Migratory Bird Conservation Funds have been used to purchase absolute ownership of over 3 million acres and easements or leases on another 2.4 million acres.

FWS monitors easements by way of aerial and ground checks by FWS law enforcement officials, or in some cases, other refuge officials. Refuge law enforcement officials help monitor almost 33,000 conservation easement contracts with non-Federal landowners. Common easement violations include –

- draining, filling, and burning of wetland easements;
- early haying or burning of grassland easements; and
- mowing or burning of habitat easements.

Typical monitoring actions used by FWS include review of current aerial photographs, which are compared to file map outlines of the easement.



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## Findings

FWS is making an effort to monitor its large inventory of conservation easements, but is not doing so effectively. Specifically, conservation easement monitoring and enforcement is highly variable from location to location; the documentation for monitoring these easements is poor, and several factors create financial incentives for land owners to violate conservation easements. FWS has an opportunity to create Bureau-wide guidance for administering, monitoring, and enforcing easements.

A few FWS field sites we visited had implemented processes that improve conservation easement administration and management. In these instances, field sites are using technological advances, public data, and landowner outreach.

### **Conservation Easements are not Uniformly Monitored**

The level of easement monitoring varies from one site to another depending on the number of law enforcement personnel assigned to the site, but, FWS field offices are not uniformly monitoring and enforcing easements. For example, while some field offices have implemented vigorous monitoring and enforcement efforts and technologies, others rely substantially on third parties or adjacent landowners to identify and report potential violations.

Resources are not uniformly dispersed and may be inadequate at some locations. Some field offices have no dedicated law enforcement official (LEO). For example –

- Sand Lake WMD administers about 4,600 easements with 1 full time (FT) and 1 part time (PT) LEO;
- Devil's Lake Wetland Management District (WMD) administers about 2,700 easements with 1 FT and 3 PT LEOs;
- Fergus Falls WMD administers about 1,100 easements with 1 FT LEO;
- Detroit Lakes WMD administers about 400 easements with 1 FT LEO; and
- Balcones Canyonlands National Wildlife Refuge (NWR) administers 15 easements with no dedicated LEO.

Service officials at Devil's Lake WMD told us that they are not enforcing burning violations in their district. They estimated that there are as many as 200 to 300 such violations each year. The LEO stated that, because they do not track burn violations, he was unsure of any specific landowners who repeatedly violate the easement agreements. The official further stated, "There can be days we can't use aircraft [to do aerial surveillance] because there is so much smoke [from fires]." Violation remediation efforts give priority to actions that lead to restoration by the landowner to the original easement condition. Other consequences include fines

and lawsuits. In some fine schedules, the fine for conservation easement violations is \$500. FWS has not evaluated whether the current fines and penalties structure sufficiently deters landowner violation of easement provisions.

According to Government Accountability Office report number 11-144, dated December 2010, FWS commissioned the International Association of Chiefs of Police in 2005 to develop a staffing deployment model. The purpose of the model was to help FWS determine its overall law enforcement staffing needs and assign new LEOs to specific refuges. Risk assessments of certain illegal activities, however, were not included in the model. The Chief of the Division of Refuge Law Enforcement wanted to update the model, reevaluate the weighted values, and include assessment components omitted from the initial analysis, but had no specific plans to do so.

We acknowledge that not all conservation easements require the same level of monitoring. FWS, however, does not have a prioritized approach to applying the necessary resources for effective monitoring and enforcement of easements. Without a workforce analysis, there is no assurance that an adequate number of LEOs manage current conservation easements. More work is needed for FWS to identify and assign the resources necessary to enforce conservation easement agreement provisions.

### **Recommendations**

1. Conduct a workload and workforce analysis of law enforcement and monitoring resources to determine the resources needed to protect easement assets against violation.
2. Evaluate conservation easement violation fines and penalties to assess whether or not the penalties sufficiently deter violations, and make subsequent changes to the structure as appropriate.

FWS provided us with a response to the Notice of Potential Finding and Recommendation we issued in June 2011 that it concurs with our Recommendation 1. FWS stated that it will contract with the International Association of Chiefs of Police to perform a risk-based assessment, develop a threat matrix, and a rerun of the 2005 Deployment Model using these new parameters with work to be completed by December 31, 2012.

## **Financial Incentives for Violating Easement Provisions**

Farmers have financial incentives to violate easement provisions. Financial incentives resulting from changes in farming technology and USDA Farm Bill programs have increased FWS's monitoring and enforcement burden.

As farm implements, such as drills, sprayers, and tractors, become larger, landowners could increasingly view small isolated wetlands as nuisance spots because they are tired of working around them. Farm Bill programs unintentionally create a financial incentive for landowners to violate wetland easement provisions. We believe that USDA should be aware of the conservation easements FWS has acquired so that it can ensure that payments to farm operators for Farm Bill programs properly reflect limitations on land use imposed by FWS conservation easements. FWS realty officials told us that FWS conservation easement information is provided to agencies of the USDA when specifically requested, but that this information is not provided on a routine or regular basis.

One Farm Bill program that offers financial incentive, “prevented planting,” compensates a landowner for up to 60 percent of the revenue that would be generated by normal production for acres that cannot be seeded to a crop.

Using USDA’s approved commodity prices for March 2011 and average crop yields for the area in 2010, we estimate that a farmer growing corn in Towner County, ND, which is administered by FWS’ Devil’s Lake WMD, could obtain a prevented planting insurance payment of approximately \$360 per acre. To qualify for payment, the operator must make only an attempt to farm the acres, which are typically wetland acres. Simply plowing the ground once in the fall, when wetlands are naturally dry, can constitute an attempt. To facilitate plowing, landowners oftentimes will first burn off the wetland vegetation. These burns commonly occur on conservation easement protected wetlands in absence of the required permit from the administering district, which is a violation of the easement provisions.

This creates situations in which farmers may see fines only as a cost of business. For example, in certain fee schedules, the fine for a conservation easement violation is \$500. The financial incentive of \$360 an acre provided by the USDA Farm Bill for a hypothetical 10 acre wetland yields a potential financial benefit to the farmer of \$3,600. In this scenario, the worst case financial gain is \$3,100, providing no real disincentive to violating easement provisions.

### **Recommendation**

3. Regularly provide easement location information to USDA.

### **No Bureau-wide Guidance**

FWS does not have Bureau-wide guidance for administering, monitoring, and enforcing easements. FWS Regions 3 and 6 developed and implemented the “Administrative and Enforcement Procedures for FWS Easements within the Prairie Pothole States” (Easement Manual) in October 2005. Subsequently, in December 2010, Region 6 implemented a second edition of the Easement Manual,

applicable to only Region 6. These manuals describe how to maintain documentation for each easement administered by field offices in these regions. They also provide a common framework of actions that should be used to monitor easements and enforce their terms and conditions.

No specific guidance has been developed for use by field offices in FWS's other regions. With few exceptions, field offices in the other FWS regions administer fewer than 20 easements each. Even so, these offices would benefit from the development and implementation of basic guidance on the administration and monitoring of easements to ensure a minimum level of attention to this activity. Based on our review of the recently updated Region 6 Easement Manual, we concluded that this guidance document could be applied Bureau-wide, with minor modification.

#### **Recommendation**

4. Establish and implement uniform guidance for administering, monitoring, and enforcing easements.

## **Conservation Easement Monitoring is Poorly Documented**

FWS's easement monitoring efforts are poorly documented. We found that field office files contained only copies of the easement and documentation related to the original acquisition (e.g., title, drawings, correspondence, etc.). The Easement Manual developed by Regions 3 and 6 requires field offices to include a chronological list of events in each easement file. Regions 3 and 6 must use this specific form to maintain a permanent record of events, notes, observations, and conversations concerning the easement. Other field offices in other regions are not required to use a chronological list of events. This document, or a suitable alternative, however, could be used by all regions in easement files to document FWS easement monitoring activities and results.

We reviewed a total of 87 randomly-selected easement files at 7 field offices administering 9 refuges or districts. We also judgmentally selected another 17 files for review (see Appendix 2). The files we reviewed either did not contain a chronological list of events or the list was not current and complete. Further, the files did not contain other documents providing evidence of current and ongoing monitoring by the field office. Because FWS easements are perpetual, a failure to effectively document current monitoring efforts could make future enforcement difficult.

## Recommendations

5. Document monitoring activities in the easement files.
6. Develop an automated easement inspection process to record the easement monitoring history.

## Promising Practices

Some FWS field sites have implemented processes that serve to improve conservation easement administration and management by using technological advances, public data, and landowner outreach.

### Digital Aerial Map Overlays

Detroit Lakes WMD, MN, identifies and detects easement violations with use of digital aerial map overlays. Like all offices we visited, this WMD uses ArcGIS software. This software is a geographic information system that provides accurate geographic information and tools to personalize maps for decision-making and to review aerial photos of potential easement violations.

Detroit Lakes WMD also creates additional digital map overlay layers of the easement map, drainage facility map, and county assessor map that can be layered above imported aerial photos of the easements. This improves easement monitoring by visually clarifying exact easement boundaries, protected wetlands, and assessor parcel numbers so as to look up the current owner. It also allows detection of past wetland drainage or ditching violations that were not tracked during regular aerial inspections. This is achieved by comparing the aerial photo and the wetland easement map over time and seeing the reduction of the wetland size not created naturally, such as by reduction in precipitation.

### Landowner Outreach

Detroit Lakes WMD, MN, and Devils Lake WMD, ND, stay abreast of changes of ownership and keep landowners and their tenants apprised of easement requirements through landowner outreach. In contrast, we noted that most offices just send notifications reminding landowners of their easement responsibilities every 3-5 years or in the year that FWS notices a change in ownership.

### High Resolution GPS-Linked Cameras

Improved detection of aerially-observed easement violations through the use of aircraft belly-mounted high resolution GPS-linked digital cameras are conducted at Detroit Lakes and Fergus Falls (Fergus Falls) WMDs. Region 3 uses this method, which allows LEOs to photograph all of their easements. The new high-resolution process was originally used by the FWS Habitat Population Office for bird surveys. Benefits include –

- images that are automatically geo-referenced to the point where it was captured so the person using the photograph knows to which easement the photograph correlates;
- photographs that are taken at 9,000 feet instead of 1,000 feet, as done in the past;
- images that are adjustable in terms of brightness and zoom; and
- image process and review time that is reduced from 4 days to 2 and a half days.

### **Electronic Annotation of Easements**

Devil's Lake WMD uses ArcPad software to electronically annotate easement violations. The software notes violations at the points on a GIS map where they are spotted, as opposed to the former process in which LEOs marked violations on a paper aerial map.

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# Conclusion and Recommendations

## Conclusion

FWS derives substantial benefits for wildlife from the acquisition of conservation easements and does so at a lower cost than if the lands were purchased outright. The benefits to affected habitat and wildlife can be quickly lost, however, if FWS is not diligent in ensuring that landowners adhere to the restrictions on the use of their property that FWS has purchased. Attention to workload, violation deterrents, guidance and improved documentation will help to safeguard FWS conservation easement assets and the wildlife it seeks to protect.

## Recommendations

We recommend that FWS:

1. Conduct a workload and workforce analysis of law enforcement and monitoring resources to determine the resources needed to protect easement assets against violation.

**Agency Response:** FWS concurs with the recommendation and states that it has contracted with the International Association of the Chiefs of Police (IACP) to develop a law enforcement risk assessment for each unit of the National Wildlife Refuge System (NWRS). This collaborative effort includes the creation of a threat assessment and matrix and improvement of the 2004 IACP Deployment Model for the NWRS. Implementation of the revised model will provide better management of law enforcement resources throughout the NWRS. The targeted completion date for this recommendation is December 31, 2012.

**OIG Reply:** We consider this recommendation resolved, but not implemented. We want to reiterate that our recommendation is for FWS to gain information useful in determining the monitoring and enforcement staffing resources it needs to protect all easement assets against violation.

2. Evaluate conservation easement violation fines and penalties to assess whether or not the penalties sufficiently deter violations, and make subsequent changes to the structure as appropriate.

**Agency Response:** FWS concurs with this recommendation. It will lead an effort to conduct the evaluation and commit to making changes as appropriate. The targeted completion date for this recommendation is December 31, 2012.

**OIG Reply:** We consider this recommendation resolved, but not implemented.

3. Regularly provide easement location information to USDA.

**Agency Response:** FWS appeared to concur with this recommendation. In its response, FWS states that its Region 6 Administrative and Enforcement Procedures for FWS Easements manual, “requires wetlands management district offices to annually provide updated easement information to their local USDA service offices.” FWS also states that its Region 8 agreed with providing USDA with FWS easement information, including easement location, type, and related restrictions. FWS states, however, that it was unrealistic for “staffs to adequately monitor all burn violations in many areas” and it was “even more unrealistic to expect USDA to monitor easement lands to ascertain eligibility for Farm Bill benefits.” FWS states that the recommendation process “...will be included in a larger process of a standardized nationwide Service policy development” with a targeted completion date of December 31, 2013.

**OIG Reply:** It is unclear whether FWS fully concurs with this recommendation. Therefore, we consider the recommendation unresolved. In its response, FWS does not clarify what easement information would be required reporting to USDA and whether the information would be reported by all FWS regions on a consistent basis in the Service’s process of developing a “standardized, nationwide Service policy.”

4. Establish and implement uniform guidance for administering, monitoring, and enforcing easements.

**Agency Response:** FWS concurs with this recommendation and states that it “stands ready to lead in the development of an over-arching framework, as well as assist other regions as appropriate in the development of more specific easement administration and enforcement guidance.” The targeted completion date for this recommendation is December 31, 2013.

**OIG Reply:** We consider this resolved, but not implemented.

5. Document monitoring activities in the easement files.

**Agency Response:** FWS does not concur with this recommendation. It states that it has a process already in use. It states that Regions 3 and 6 use of “Chronological List of Events” form has become “less useful” to document an important easement event because officers and managers use official notes and memoranda to the file to capture relevant information that may be used later in a legal proceeding. In addition, FWS states that



Region 6 will continue to use standard operating procedure to monitor and manage easements annually.

**OIG Reply:** We consider this recommendation unresolved. FWS states that a monitoring documentation process is “already in use.” From our discussions with local FWS officials we found that monitoring was occurring. The files we reviewed, however, showed little or no evidence of routine monitoring. We checked for the Chronological List of Events form during our file review because it was identified as a required process in the FWS Region 3 & 6 Administrative and Enforcement Procedures. As far as we know, FWS does not require monitoring documentation in other regions. We believe that routine monitoring activity should be documented servicewide. Further, if the Chronological List of Events form in each easement folder has become “less useful,” then another method of documentation should be developed.

6. Develop an automated easement inspection process to record the easement monitoring history.

**Agency Response:** FWS does not concur with this recommendation. It states that its Law Enforcement Information Management and Gathering System and its future Incident Management and Reporting System would satisfy this recommendation.

**OIG Reply:** We consider this recommendation unresolved. The systems FWS refers to in its response record only law enforcement incidents and do not document conservation easement monitoring history. Our recommendation was directed toward an automated process for recording routine easement monitoring history, which is in addition to documenting easement enforcement incidents only when infractions have been detected. We refer FWS to recommendation 5 for a possible resolution to this recommendation.

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# Appendix I: Scope and Methodology

## Scope

We performed our evaluation in accordance with the “Quality Standards for Inspections,” issued by the Council of the Inspectors General on Integrity and Efficiency. Our scope included all conservation easements managed by FWS since 1921. We believe that the work performed provides a reasonable basis for our conclusions and recommendations.

## Methodology

To perform our review we –

- reviewed all applicable laws, rules and regulations, and FWS policies related to conservation easements;
- interviewed FWS officials regarding conservation easement processes and policy;
- interviewed U.S. Department of Agriculture (USDA) and USDA Office of Inspector General officials regarding USDA farm support programs;
- reviewed a judgmental and random sample of conservation easement files; and
- reviewed Government Accountability Office report # GAO-11-144 related to FWS use of staffing deployment model.

## Appendix 2: FWS Conservation Easement File Review and Violations Noted

### Judgmentally Selected and Random Totals

Field Office	Files Reviewed	Violations Noted
Balcones Canyonlands National Wildlife Refuge	13	0
Detroit Lakes Wetlands Management District (WMD)	10	4
Devils Lake WMD	17	7
Fergus Falls WMD	22	7
Grasslands Wildlife Management Area	12	1
Sand Lake WMD	24	5
Texas Mid-Coast Refuge Complex (3 Refuges)	6	0
Totals	104	24

### Randomly Selected Totals

Field Office	Files Reviewed Random	Violations Noted Random
Balcones Canyonlands NWR	13	0
Detroit Lakes WMD	7	3
Devil's Lake WMD	17	7
Fergus Falls WMD	11	3
Grasslands WMA	12	1
Sand Lake WMD	21	3
Texas Mid-Coast Refuge Complex	6	0
Totals	87	17

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## **Appendix 3: Department Response**

The Department's response to the draft report follows on page 17.



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Washington, D.C. 20240



In Response Reply to:  
FWS/BPHC/PDM/DCN 049960

To: Department of the Interior, Inspector General  
Through: Assistant Director, National Wildlife Refuge System  
From: Chief of Law Enforcement, NWRS  
Re: Comments on OIG Report No. WR-EV-FWS-0003-2011

*James W. Kura*

*[Signature]*

On behalf of the National Wildlife Refuge System, below are responses to the specific recommendations, as well as other relevant comments on the balance of the subject report.

- On page 3 the report discusses FmHA conservation easements. Specifically, the report reads “FWS also manages conservation easements obtained from the Farm Service Agency, previously known as the Farmers Home Administration (FmHA). FmHA originally acquired these easements to assist farmers and families living in rural areas.”

There are two technical inaccuracies in these statements. First, FmHA did not become FSA. Under reorganization of USDA, the functions of FmHA were transferred to FSA in 1994. FSA was previously called the Agricultural Stabilization and Conservation Service, or ASCS.

Second, FmHA did not acquire these easements to “assist farmers and families.” Rather, in “last resort” efforts to keep farmers on their lands, FmHA offered low interest emergency farm loans to farmers who could not otherwise obtain credit from commercial lenders. Some of these farmers defaulted on these loans, and their lands transferred to federal inventory. While in federal inventory, conservation easements with values commensurate with the outstanding loan amount were prescribed by FmHA and the land was re-sold, often times either to the original landowner or to those qualifying as “beginning” farmers at a much-reduced cost. The loans were forgiven; however, the lands were now encumbered with FmHA conservation easements.

- On page 3, the report states “The Land and Water Conservation Fund Act and Migratory Bird Conservation Act provide the primary funding...”

Actually, it is not the MBCA that provides the funding; rather, it is the Migratory Bird Hunting and Conservation Stamp Act that provides proceeds through the sale of duck stamps that funds habitat conservation. This is stated correctly later on in the same paragraph.



- On page 4, the use of the figure of 2.4 million acres is confusing since the following statistics are what we actually manage:

As of 9/30/2010, we managed 174,998 acres from the FmHA, including 131,401 easement acres and 43,597 fee acres.

As of 9/30/2010, we managed 3,489,634 easement acres. For its "conservation easements," the OIG asked us to limit our query to conservation easements, wetland-flowage easements, wetland easements, grassland easements, and FmHA easements; the total based on that criteria is 3,416,589 managed acres as of 9/30/2010.

As of 9/30/2010, we managed 2,405,478 acres acquired using MBCF dollars, 198,650 acres acquired using LWCF dollars, and 153,738 acres acquired using NAWCF dollars.

### **Comments on Specific Recommendations:**

#### **1. *Conduct a workload and workforce analysis...***

In compliance with the recommendations of the Government Accountability Office Report: **Federal Lands: Adopting a Formal, Risk-Based Approach Could Help Land Management Agencies Better Manage Their Law Enforcement Resources**, GAO-11-144. and the Office of Inspector General Evaluation of USFWS Conservation Easement Monitoring and Enforcement (Assignment No. WR-EV-FWS-0003-2011IG , The National Wildlife Refuge System (NWRS), Division of Refuge Law Enforcement has contracted with the International Association of Chiefs of Police (IACP) to assist in the development of law enforcement risk assessments of each unit of the National Wildlife Refuge System (NWRS), creation of a threat assessment and threat matrix, and a restructure and enhancement of the 2004 IACP Deployment Model for the NWRS. This model, when complete, will allow the Service to better manage law enforcement resources throughout the NWRS.

One Service Region recommended that this should not apply only to law enforcement personnel and resources. In that Region most of the easement monitoring and compliance issues are handled by easement managers (Wildlife Refuge Specialists) and workload and workforce needs for these entities should be determined as well.

**Contact individual / Target Dates: Jim Hall (703)-358-1895. Contract already awarded.**

#### **2. *Evaluate conservation easement violation fines and penalties to assess whether or not the penalties sufficiently deter violations, and make subsequent changes to the structure as appropriate.***

It is the belief of management, as well as that of at least one Assistant United States Attorney with whom they work, that fines and penalties for conservation easement violations are not adequate to deter future violations. Therefore, we concur with this recommendation and stand poised to lead an effort to conduct the evaluation and commit to making the changes as

appropriate.

**Contact individual / Target Dates: Jim Hall (703)-358-1895. December 31, 2012.**

3. *Regularly provide easement location information to USDA.*

Region 6's "Easement Manual" for the Prairie Pothole States has an entire section in Chapter V dedicated to "Actions to Help Prevent Future Violations." This section requires wetland management district offices to annually provide updated easement information to their local USDA service offices. Specifically, wetland management districts are to provide county USDA offices with county maps depicting Service holdings (fee title and easements), and this information is to be updated each year.

However, this recommendation seems to have been made as a result of USDA's "prevented planting" program and its potential to encourage burn violations of Service wetland easements. It is important to understand that the Service will routinely issue burn permits to landowners wishing to clear vegetation from protected wetlands. Prescribed fire can benefit wetlands by rejuvenating cattail-choked wetlands and resetting succession to an earlier stage. Consequently, it is customary to issue these permits on a 3-year rotational basis (landowner can burn a wetland every third year, or one-third of his wetlands each year). Additionally, as the report states, many wetland management districts are unable to track burn violations due to an overwhelming workload consisting of more serious drain and fill violations. It is simply unrealistic at this time for Service staffs to adequately monitor all burn violations in many areas; it is even more unrealistic to expect USDA to monitor easement lands to ascertain eligibility for Farm Bill benefits. Even with perfect monitoring and enforcement of burn violations, we are extremely skeptic of USDA's willingness to withhold a benefit from a landowner (prevented planting payment) based on an easement violation, especially in light of the relatively minor fines/penalties (as mentioned earlier in the report).

Service Region 8 reports that not only should the locations of FWS easements be provided to USDA, but the type of easement and corresponding restrictions should also be provided. Since FWS easement restrictions can vary between properties, regions, etc. it would be important to provide this information so USDA can determine whether the property is eligible for various programs. Some USDA conservation programs may be appropriate on FWS easement lands and may help provide financial incentives to improve habitat. It would also be beneficial to provide USDA with a FWS point of contact for each easement property.

**Contact individual / Target Dates: Jim Hall (703)-358-1895, will be the primary contact for this action item, but this process will be included in the larger process of a standardized nation-wide Service policy development. December 31, 2013.**

4. *Establish and implement uniform guidance for administering, monitoring, and enforcing easements.*

The Service stands ready to lead in the development of an over-arching framework, as well as

assist other regions as appropriate in the development of more specific easement administration and enforcement guidance.

Service Region 8 reports that we may want to include increased Landowner Outreach as a formal recommendation. Landowner outreach/education which helps remind owners of their easement obligations on a regular basis is a cost effective way to decrease violations and subsequent enforcement issues.

**Contact individual / Target Dates: Jim Hall (703)-358-1895. December 31, 2013.**

*5. Document monitoring activities in the easement files.*

The report alludes to Service Region 3 & 6's use of the "Chronological List of Events" form in each easement folder. Over the years, this form has become less useful to officers and managers in easement administration and enforcement. This is largely because this form is not to be used, by itself, to document an important event in the easement file. Rather, officers and managers are to use official Notes to the File and Memoranda to capture and archive relevant information, including photographs, maps, records of conversations, ground checks, interviews, etc. This information is to be processed and preserved in such a manner so that it may be used later in a legal proceeding.

Region 6 monitors approximately 30,000 easement contracts annually. The report points out that the Sand Lake Wetland Management District alone oversees 4,600 easements. It is not realistic, nor does it serve any useful purpose, to make a notation in each easement folder annually that monitoring was completed. Region 6 reports that it has always been, and will continue to be, their Standard Operating Procedure to monitor the easements that they manage annually.

**Contact individual / Target Dates: Jim Hall (703)-358-1895. Already in use.**

*6. Develop an automated easement inspection process to record the easement monitoring history.*

The Service is currently utilizing the Law Enforcement Information Management and Gathering System (LE-IMAGS), which allows for the automated management of all law enforcement incidents, including easement enforcement. The Department, over the last 6 years, has been working on an automated law enforcement incident management program called the Incident Management and Reporting System (IMARS) which will someday replace the incident management portion of LE-IMAGS, but it has not yet been implemented for full field use at this time, nor is it known if IMARS will have the capability of managing easement enforcement cases.

**Contact individual / Target Dates: Jim Hall (703)-358-1895. Already in use.**



## Appendix 4: Status of Recommendations

Recommendation	Status	Action Required
1, 2, and 4,	Resolved; not implemented.	No further response to OIG is required. The recommendations will be referred to the Assistant Secretary for PMB for tracking of implementation.
3	Unresolved.	Further information is required. Please clarify what information FWS would require to be reported and whether it would require all regions to report this information regularly. Once the OIG receives clarification, we will reassess the status of this response.
5	Unresolved.	Further information is required. Please clarify how FWS plans to document monitoring activities. Once the OIG receives clarification, we will reassess the status of this response.
6	Unresolved.	Further information is required. Please clarify how FWS plans to document its monitoring history. Once the OIG receives clarification, we will reassess the status of this response.

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