



U.S. Department of Agriculture



Office of Inspector General  
Western Region

## **Audit Report**

# **Natural Resources Conservation Service and Farm Service Agency: Crop Bases on Lands With Conservation Easements in California**

Report No. 50099-11-SF  
August 2007



UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF INSPECTOR GENERAL  
Washington, D.C. 20250



REPLY TO

ATTN OF: 50099-11-SF

TO: Arlen Lancaster  
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Natural Resources Conservation Service

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FROM: Robert W. Young /s/  
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for Audit

SUBJECT: Natural Resources Conservation Service and Farm Service Agency: Crop Bases  
on Lands With Conservation Easements – State of California

This report presents the results of the subject review. Your written responses to the official draft report are included in their entirety as exhibits with excerpts and the Office of Inspector General's (OIG) position incorporated into the relevant sections of the report. Based on the information in your written responses, we have accepted your management decision on Recommendations 1, 5, and 10. Please follow your internal agency procedures in forwarding final action correspondence to the Office of the Chief Financial Officer.

Based on your written responses, management decision has not been reached on Recommendations 2, 3, 4, 6, 7, 8, and 9. The information needed to reach management decision on these recommendations is set forth in the OIG Position section after each recommendation. In accordance with Departmental Regulation 1720-1, please furnish a reply within 60 days showing the actual or planned timeframe for implementing each recommendation. Please note that the

regulation requires a management decision to be reached on all findings and recommendations within a maximum of 6 months from report issuance, and final action to be taken within 1 year of each management decision.

We appreciate the courtesies and cooperation extended to us by members of your staff during the review.

# Executive Summary

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## Results in Brief

The Natural Resources Conservation Service (NRCS) administers several conservation easement programs that offer landowners the opportunity to restore their land to a natural state (i.e., wetlands and grasslands). This audit reviewed three of these programs in California: the Wetlands Reserve Program (WRP), the Emergency Watershed Protection Program (EWP), and the Grassland Reserve Program (GRP). During fiscal years (FYs) 1999-2005, NRCS allocated about \$1.8 billion for the three programs nationwide, with California receiving \$111,707,364.

When landowners with conservation easements participate in the Farm Service Agency's (FSA) farm subsidy programs, FSA must subtract the easement acres from the farm's cropland acres.<sup>1</sup> If the resulting total is less than the farm's crop bases—historical average acreage of the crops planted on that land—then FSA must reduce the crop bases and use the new figure to calculate the subsidy payment. Therefore, NRCS must coordinate with FSA about the easement so that FSA can appropriately reduce crop bases and correctly calculate subsidy payments.

In a prior audit, we examined NRCS' WRP easements recorded from FYs 1999-2003 (Audit Report No. 10099-3-SF). We determined that NRCS did not inform FSA of the 17 easements we reviewed in California. The audit exemplified the need to improve interagency communication, which OIG identified as a major Departmental management challenge in 2005 and 2006. To achieve this, we recommended that NRCS provide a list of all recorded and pending easements to FSA annually. We reached management decision on these recommendations based on NRCS' estimate that it would implement corrective action by September 2005.

In addition to following up on the WRP easements in the previous audit, we expanded our scope in this audit to include additional WRP easements as well as EWP and GRP easements. Our audit objectives were to: (1) review FSA's and NRCS' controls that ensure proper disposition of crop bases on land subject to conservation easements, and (2) identify improper farm subsidy payments to producers participating in conservation easement programs. Our scope was FYs 1999-2005, during which NRCS' California State office acquired 180 conservation easements.

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<sup>1</sup> Throughout the report, we use landowners to refer to both producers and landowners. See the glossary for the technical distinctions between the two.

We found that NRCS was still not communicating easement information to FSA. As a result, FSA made a number of improper farm subsidy payments on easement-encumbered lands and was at risk of making more. To prevent this, we issued a management alert in September 2005, which informed NRCS and FSA of the continuing problem and recommended that NRCS immediately provide a list of all WRP, EWP, and GRP easements to FSA.

In response to the alert, NRCS provided a list of all recorded easements and amended its policy in the NRCS *Conservation Programs Manual – Wetlands Reserve Program* to address the procedures associated with the transfer or retirement of crop bases on easement-encumbered lands. FSA agreed to use the easement listings provided by NRCS to determine the disposition of crop bases and recover any improper subsidy payments.

In total, we reviewed 58 recorded easements (53 WRP/EWP and 5 GRP) for the 3 programs in 8 California county offices to determine if crop bases were properly removed. For these easements, we identified \$1,385,937 in improper payments (see exhibit A).

- In 49 of 53 WRP and EWP easements, NRCS field offices did not notify FSA when the easements were recorded (Finding 1).<sup>2</sup> This occurred because the NRCS field offices misinterpreted the manual requirements, and believed the State office would advise FSA of the easements and provide the necessary easement information. Without the easement information, FSA made improper farm subsidy payments on 33 easements, totaling \$1,290,147 (see exhibit C).<sup>3</sup>
- Unlike EWP and WRP easements, FSA did receive GRP easement information from NRCS. However, FSA county officials in two counties did not remove crop bases from three of the five recorded GRP easements (Finding 2). In one county, the official forgot to reduce the crop bases from one easement. In the other county, the official mistakenly believed that one farm's two GRP easements had no crop bases. As a result, producers received improper farm subsidy payments totaling \$20,818 for crop bases on easement-encumbered lands (see exhibit D).

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<sup>2</sup> NRCS provided cropping rights letters to FSA for four landowners; while this notified FSA of the easements, the letters did not provide the recordation date (in three cases) and the required maps, aerial photos, and other necessary easement information so that FSA could determine the precise easement location and acreage.

<sup>3</sup> There were no improper payments on the remaining 20 easements because (1) there was sufficient cropland in 8 cases to support both the easement acreage and crop bases, and (2) FSA properly removed crop bases in the 12 cases since the landowners had notified FSA about these easements.

In addition, in 2002, the new Farm Bill disallowed farm subsidy payments on easement-encumbered land even with a cropping rights letter. However, FSA's Direct and Counter-Cyclical Program Handbook was inconsistent with the bill because it continued to allow producers to receive payments with a cropping rights letter (Finding 3). As a result, two landowners were issued improper farm subsidy payments totaling \$74,972 (see exhibit D).

In conclusion, the inadequate communication between NRCS and FSA regarding conservation easements continued to systemically affect FSA's ability to avoid making improper payments on easement-encumbered land. Accordingly, NRCS needs to improve its controls to inform FSA of all recorded easements so that FSA can reduce the crop bases from easement lands as appropriate.

## **Recommendations In Brief**

To correct these issues, we recommend that NRCS:

- Provide training for field office staff in California on their responsibilities for notifying FSA of recorded easements.

We recommend that FSA direct its California State office to:

- Remove the crop bases from the 33 WRP and EWP easements and recover \$1,290,147 from the landowners.
- Remove the crop bases from the three GRP easements and recover \$20,818 from the landowners.
- Recover \$74,972 from the two producers that improperly received an additional year of farm subsidy payments.
- Verify that crop bases were appropriately removed from the eight pending easements identified during the audit.

We also recommend that FSA instruct all other FSA State offices to:

- Determine if crop bases were properly removed from easement lands and to recover any improper farm subsidy payments. Instruct the State offices to report the results of their determinations to the national office.
- Review the files of any landowners that received cropping rights letters after FY 2001 to: (1) determine if farm subsidy payments

were made in the year the easements were recorded, and (2) recover any improper payments. Instruct the State offices to report the results of their determinations to the national office.

**Agency  
Response**

In NRCS' written response, dated August 1, 2007, and FSA's written response, dated July 31, 2007, both agencies generally concurred with the reported findings and recommendations. NRCS' response is included in exhibit E and FSA's response is included in exhibit F of this report.

**OIG Position**

We accept NRCS' management decision for Recommendation 1 and FSA's management decisions for Recommendations 5 and 10. The actions needed to reach management decision on Recommendations 2, 3, 4, 6, 7, 8, and 9 are provided in the OIG Position section after each recommendation.

***Abbreviations Used in This Report***

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|          |   |
|----------|---|
| DCP      | Direct and Counter-Cyclical Program   |
| EWP      | Emergency Watershed Program   |
| FSA      | Farm Service Agency   |
| FY       | Fiscal Year   |
| GRP      | Grassland Reserve Program   |
| NRCS     | Natural Resources Conservation Service  |
| OCFO/PAD | Office of the Chief Financial Officer/Planning and Accountability<br>Division |
| OIG      | Office of Inspector General   |
| USDA     | United States Department of Agriculture                                       |
| WRP      | Wetlands Reserve Program  |

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# Background and Objectives

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## Background

The Natural Resources Conservation Service (NRCS) administers several conservation easement programs that offer landowners the opportunity to restore their land to a natural state (e.g., wetlands and grasslands). This audit reviewed three of these programs in California: the Wetlands Reserve Program (WRP), the Emergency Watershed Protection Program (EWP), and the Grassland Reserve Program (GRP).<sup>4</sup> During fiscal years (FYs) 1999-2005, our audit's scope period, NRCS allocated about \$1.8 billion for the three programs nationwide.

- WRP easements establish long-term conservation and wildlife practices and protection. During our scope period, NRCS spent \$1.5 billion to enroll 1.2 million acres in WRP.
- EWP easements protect the floodplain, conserve natural values including fish and wildlife habitat, and safeguard lives and property from floods, drought, and erosion. From 1999-2003, NRCS spent \$99.5 million to enroll 128,663 acres in EWP. Since 2001, the floodplain component of EWP has not been funded.
- GRP easements protect and restore the grasslands and shrublands. Privately-owned grasslands and shrublands cover more than 525 million acres in the United States. GRP was enacted in 2003 and from 2003-2005, NRCS spent \$186 million to enroll 909,100 acres in GRP.

To participate in one of these easement programs, the landowner must submit an application at the local NRCS office. The NRCS State office evaluates and ranks each application. For each selected application, NRCS requests an appraisal and determines the landowner's compensation, which includes the agricultural value of the land. In return, the landowner agrees to take the land out of production and to forego planting crops and any associated farm subsidy payments on the easement land.

The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) established the Direct and Counter-Cyclical Program (DCP), which is administered by FSA and is commonly known as the farm subsidy program.<sup>5</sup> FSA calculates farm subsidy payments using crop bases, payment yields, and rates. A crop base is the historical average of the acreage planted on a farm,

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<sup>4</sup> NRCS administers WRP and EWP, but both NRCS and FSA administer GRP. For GRP, NRCS has the lead responsibility on regulatory matters, technical issues, and easement administration, and FSA has the lead responsibility for financial activities. The agencies are to consult on regulatory and policy matters pertaining to easements.

<sup>5</sup> From FYs 1996-2001, the farm subsidy program was known as "Production Flexibility Contract and Market Loss Assistance."

which cannot exceed the total acres suitable for crop production (i.e., cropland acres).

When an easement is placed on a farm, the easement acres are subtracted from the cropland acres. If the cropland acres are less than the crop bases after the easement acres have been subtracted, then the crop bases must be reduced to match the cropland acres. Accordingly, FSA's subsidy calculation must change to reflect the new, lower amount of crop bases. On the other hand, if the cropland acres still exceed the crop bases after the easement acres have been subtracted, then the crop bases do not have to be reduced and FSA's subsidy calculation remains the same.

To receive farm subsidy payments, the 2002 Farm Bill requires landowners/producers annually to certify the crops planted on the acreage report form and to sign a DCP contract.<sup>6</sup> They must certify the accuracy of the information on the contract and comply with the regulations governing the program.

### California

By October 2005, the number of acres enrolled in the three easement programs totaled nearly 2.7 million acres nationwide. California had 131,315 acres, representing about 5 percent of the total acres in these programs. In 2005, program funds totaled about \$319 million, with California receiving over \$16 million.

NRCS' policy makes the State conservationist responsible for administering easement programs. In California, the State conservationist delegated this responsibility to the State wetlands biologist. The biologist's oversight responsibilities included monitoring the enrolled lands, maintaining the official program records and supporting documents, and issuing cropping rights letters. These letters inform affected landowners of the right to plant and harvest a spring crop or to harvest crops that were planted on the land before the easement was recorded.

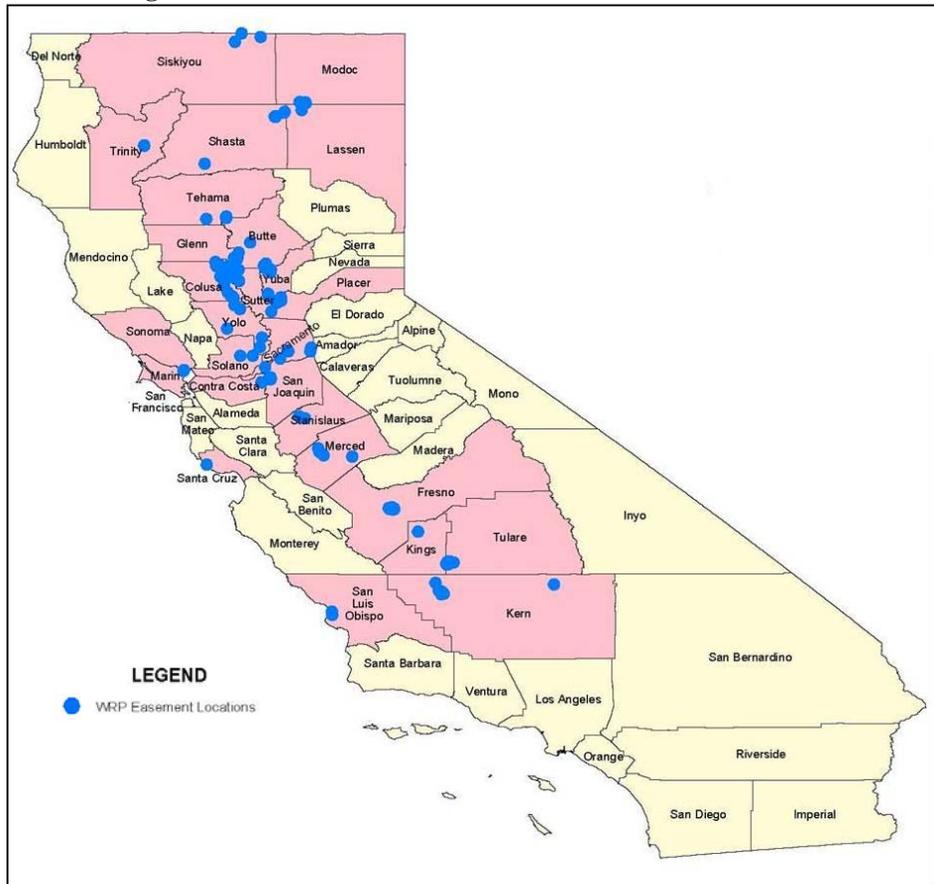
Prior to 2002, if a landowner received a cropping rights letter from NRCS, FSA allowed farm subsidy payments to be made on easement lands in the FY the easement was filed. With the implementation of the 2002 Farm Bill, landowners can no longer receive farm subsidy payments on easement-encumbered land, even with a cropping rights letter.

Figure 1 shows the locations of all WRP easements, the most common easement program in California, in FY 2003.

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<sup>6</sup> Throughout the report, we use landowners to refer to both producers and landowners. See the glossary for the technical distinctions between the two.

**Figure 1: Locations of WRP Easements in California**



**Objectives**

The audit objectives were to: (1) review FSA and NRCS controls that ensure proper disposition of crop bases on land subject to conservation easements, and (2) identify improper farm subsidy payments to producers participating in conservation easement programs.

# Findings and Recommendations

## Section 1 Crop Bases Not Reduced from Easement-Encumbered Lands

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In a prior audit, we determined that NRCS did not communicate with FSA to inform it of recorded WRP easements, and we recommended that NRCS provide a list of previous easements to FSA as well as future easement information annually. In this audit, we found the same communication problem (see Finding 1). Accordingly, we issued a management alert in September 2005, which again brought this issue to NRCS' and FSA's attention.

In response to the alert, NRCS provided a list of all easements and amended its policy in the NRCS *Conservation Programs Manual – Wetlands Reserve Program* to address the procedures associated with the transfer or retirement of crop base on easement-encumbered lands. FSA agreed to use the information provided by NRCS to determine the disposition of crop bases and recover any improper payments.

Although NRCS had notified FSA about recorded GRP easements, we identified three easements where FSA did not properly reduce the crop bases, which also resulted in improper payments to landowners (see Finding 2).

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### Finding 1

#### NRCS Did Not Notify FSA of WRP and EWP Easements

In 49 of 53 WRP and EWP easements we reviewed, NRCS field offices did not notify FSA when the easements were recorded, which allowed easement-encumbered lands to participate in FSA's farm subsidy program.<sup>7</sup> This occurred because the NRCS field offices misinterpreted the manual requirements, and believed the State office would advise FSA about the easements and provide the necessary easement information to FSA. Without the easement information, FSA made improper farm subsidy payments during FYs 1999–2005 on 33 easements, totaling \$1,290,147 (see exhibit C).<sup>8</sup>

The WRP manual's general provisions make NRCS' field offices responsible to "provide [the] FSA county office with maps and acreage of recorded WRP easements."<sup>9</sup> Another subpart states, "advise the local FSA office of the date that the easement was recorded and provide a graphic representation

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<sup>7</sup> NRCS provided cropping rights letters to FSA for four landowners; while this notified FSA of the easements, the letters did not provide the recordation date (in three cases) and the required maps, aerial photos, and other necessary easement information so that FSA could determine the precise easement location and acreage.

<sup>8</sup> There were no improper payments on the remaining 20 easements because (1) there was sufficient cropland in 8 cases to support both the easement acreage and crop bases, and (2) FSA properly removed crop bases in the 12 cases since the landowners had notified FSA about these easements.

<sup>9</sup> NRCS' *Conservation Programs Manual – Wetlands Reserve Program*, sec. 514.02(e) (May 2002).

or aerial photo detailing the easement location and acreage.”<sup>10</sup> However, this subpart did not specify whether NRCS field offices or the State office should advise FSA, causing confusion at the field offices. NRCS’ other easement guidance in the EWP manual referred to the WRP manual for detailed procedures for administering EWP floodplain easements.

We interviewed both NRCS State and field office staff in the eight counties to determine if they understood the requirements for notifying FSA about easements. The State wetlands biologist, who is responsible for administering the easement programs, stated that coordination with FSA is the field offices’ responsibility. However, based on the wording in the two WRP manual sections, NRCS field offices mistakenly thought the State office was responsible for notifying FSA. When we discussed the issue with the national office, officials believed the manuals were clear and that the California field office staff will receive training on their responsibilities.

Because NRCS did not notify FSA of recorded WRP or EWP easements, FSA did not remove crop bases from easement-encumbered lands for 33 of the 53 recorded easements we reviewed, and landowners received improper farm subsidy payments totaling \$1,290,147. We discussed each of these easements with FSA’s State office staff who concurred with our analysis and told us that they would take corrective action.

#### An Example of How Inadequate Communication Led to an Improper Subsidy Payment

In 1999, a landowner had a farm with 2,211.8 acres of crop base and 2,959 acres of cropland. Crop bases can be less than or equal to cropland but if crop bases exceed cropland acres, then FSA must reduce the crop bases accordingly. Since the landowner’s crop bases were less than his cropland, FSA correctly calculated the landowner’s farm subsidy payments using his 2,211.8 acres of crop base. Then, in 2000, NRCS recorded a 1,534-acre WRP easement on the farm without informing FSA.

If FSA had known about the easement, it would have had to subtract the easement acres (1,534) from the cropland acres (2,959), leaving the landowner with 1,425 cropland acres. Since crop bases cannot exceed cropland, FSA would have then had to reduce the crop bases (2,211.8) to equal the cropland (1,425)—a 786.8-acre reduction. Lacking the easement information, FSA continued to calculate the landowner’s

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<sup>10</sup> NRCS’ *Conservation Programs Manual – Wetlands Reserve Program*, sec. 514.34(d) (May 2002).

subsidy payment using the original crop bases (2,211.8) instead of the reduced figure (1,425). As a result, from FYs 2000-2005, FSA overpaid the landowner a total of \$93,488.

In a prior audit, we examined NRCS' WRP easements recorded from FYs 1999-2003 (Audit Report No. 10099-3-SF). We determined that NRCS did not inform FSA of the 17 recorded easements we reviewed in California. To achieve this, we recommended that NRCS provide a list of all recorded and pending easements to FSA annually. We reached management decision on these recommendations based on NRCS' estimate that it would implement corrective action by September 2005.

In our current audit, we found that NRCS was still not communicating easement information to FSA. Consequently, FSA had made a number of improper farm subsidy payments on easement-encumbered lands and was at risk of making more. To prevent this, we issued a management alert, which informed NRCS and FSA of the continuing problem and recommended that NRCS provide a list of all WRP, EWP, and GRP easements to FSA.

In response to the alert, NRCS' national office issued a directive dated September 29, 2005, which required State conservationists to provide easement information to FSA's State offices by October 14, 2005. NRCS also agreed to develop more comprehensive procedures to address the transfer or retirement of crop bases on easement-encumbered lands. FSA agreed to use this information to determine the disposition of crop bases and recover any improper payments. In February 2006, NRCS issued a national office directive to modify its WRP and EWP manuals to require landowners to complete a form CCC-505, which is used by FSA county offices to retire crop bases, upon enrollment of the land into an easement program.<sup>11</sup>

#### Pending Easements

FSA was also at risk of making improper farm subsidy payments for 8 of 10 WRP easements, which were pending at the conclusion of fieldwork (see table 1).<sup>12</sup> We informed the FSA State office staff about these pending easements who said they would work with their counties to ensure crop bases are properly removed from the easement land once these easements are recorded.

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<sup>11</sup> NRCS' Circ. 31, pt. 514, Appraisal Methodology for Wetlands Reserve Program Acquisitions (February 22, 2006).

<sup>12</sup> In 2 of the 10 pending easements, the land had sufficient cropland to support both the easement acres and the crop bases.

**Table 1: The 10 Pending Easements by County**

| County       | Crop Bases Should Be Removed<br>(a) | Sufficient DCP Cropland on Tract<br>(b) | Total Easements<br>(a)+(b) |
|--------------|-------------------------------------|---|----------------------------|
| Yolo         | 1                                   | 1                                       | 2                          |
| Solano       | 3                                   | -                                       | 3                          |
| Sutter       | 1                                   | 1                                       | 2                          |
| Colusa       | 1                                   | -                                       | 1                          |
| Stanislaus   | -                                   | -                                       | -                          |
| Tulare       | -                                   | -                                       | -                          |
| Fresno       | -                                   | -                                       | -                          |
| Kern         | 2                                   | -                                       | 2                          |
| <b>TOTAL</b> | <b>8</b>                            | <b>2</b>                                | <b>10</b>                  |

To improve its easement communication procedures, NRCS should provide training to its field offices regarding their responsibilities for notifying FSA about easements. FSA's State office should also recover the \$1,290,147 in improper payments and ensure that crop bases are removed from the 33 recorded easements and the 8 pending easements upon recordation. Since we found a high error rate in the 8 counties we reviewed—62 percent or 33 of 53—FSA should require all other county offices in California with WRP and EWP easements to determine if crop bases were properly reduced from the base acreage for the farms and to recover any improper farm subsidy payments. In addition, the FSA national office should instruct all other FSA State offices to determine if crop bases were properly removed from the easement lands and to recover any improper farm subsidy payments.

**Recommendation 1, to the NRCS Chief**

Provide training for field office staff in California on their responsibilities for notifying FSA of recorded easements.

**NRCS Response**

The Easement Programs Division (EPD) is currently conducting monthly programmatic and administrative training via teleconference with NRCS State and field office staff in California and other States regarding their responsibilities of notifying FSA of recorded easements. EPD also has scheduled a program review and field office training in California for fiscal year 2008. Estimated completion date is January 2008.

**OIG Position**

We accept NRCS' management decision for this recommendation.

## **Recommendation 2, to the FSA Administrator**

Direct FSA's California State office to remove crop bases from the 33 easement-encumbered lands, and to recover \$1,290,147 in improper payments.

### **FSA Response**

According to staff in the California State FSA office, NRCS has not yet provided all information regarding DCP base acreage retired through the WRP easements. Although FSA can proceed by ensuring that DCP program benefits are collected on any farm where the acreage enrolled in WRP is found to be on DCP base acres, as required by the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171), without definitive information regarding base acreage retired through the WRP agreement, the reduction may be understated.

Therefore, followup action is required by NRCS to provide information regarding any base acres that were retired through the applicable appraisals. Once all base reductions are identified, the California State FSA office and affected county offices will reduce the base acreage to meet all statutory requirements and initiate debt collection measures, where applicable. Depending on the nature of each applicable case, FSA may pursue equitable relief as authorized by the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171).

FSA will require action to be completed by the California State FSA office and affected county offices within 120 days following receipt of all necessary documentation from NRCS.

### **OIG Position**

We agree with FSA's corrective action. Since FSA's response to the audit, the California State FSA and NRCS officials are working together to ensure that NRCS provides all the information FSA needs to properly reduce base acreage. To achieve management decision, FSA needs to provide us with evidence to support the base acreage reductions, copies of the bills for collection, and documentation that accounts receivable for \$1,290,147 were established for the applicable producers.

### **Recommendation 3, to the FSA Administrator**

Direct the California FSA State office to verify whether the crop bases were appropriately removed for the eight pending easements identified during the audit.

#### **FSA Response**

FSA is not required to reduce DCP base acreage until the easement is filed or recorded. As such, action would not be applicable by FSA regarding pending easements.

NRCS has agreed to notify FSA immediately after the easement is filed so the appropriate action to reduce DCP base acreage can be taken. NRCS has further provided that its offices will provide FSA with a form CCC-505 if DCP base acreage was retired through the easement. The DCP base reduction should only be completed following notification by NRCS that the easement has been filed and the form CCC-505 and other applicable documentation regarding the easement have been provided to the applicable FSA office.

Therefore, it is recommended that followup action be taken by NRCS to ensure that FSA was properly notified when the eight pending easements were filed and to ensure that the required documentation was provided to the applicable FSA office. FSA will then take action, if applicable, to ensure the DCP base acreage has been reduced as required by applicable statutes.

#### **OIG Position**

Our followup with the California State NRCS office disclosed that five of the eight pending easements have been recorded, one easement is still pending, and landowners of the two remaining easements withdrew from the program.

We agree with FSA's corrective action. Since FSA's response to the audit, the California State FSA and NRCS officials are working together to ensure that NRCS provides all the information FSA needs to properly reduce base acreage. To achieve management decision, for the five recorded easements, FSA needs to provide us with evidence that the crop bases were appropriately removed. We do not expect FSA to track the one remaining pending easement. FSA should, in the normal course of business, ensure the proper disposition of the crop bases once NRCS informs it that an easement has been recorded.

### **Recommendation 4, to the FSA Administrator**

Instruct the California FSA State office to require all other county offices with WRP and EWP easements to determine if crop bases were properly

removed from the easement land and to recover any improper farm subsidy payments. Instruct the State office to report the results of the determinations to the national office.

### **FSA Response**

The California State FSA office provided the information that was received from NRCS regarding all WRP and EWP easements to applicable county offices in September 2005. FSA district directors coordinated with affected county offices to ensure the base acreage was reduced as required by the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171).

However, as specified in Recommendation 2 of this finding, if NRCS has not provided information on the number of acres retired through the easement, FSA can only proceed by ensuring that DCP program benefits are collected on any farm where the acreage enrolled in WRP is found to be on DCP base acres as required by the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171). Required reduction due to base acreage retired through the easement would not be recorded and would continue to result in improper payments unless NRCS has provided this information to the applicable FSA office.

Therefore, it is recommended that NRCS certify that all base acreage retired through the easements has been provided to FSA if the easements have been filed.

Once it is determined that the easements have been filed and the necessary documentation has been provided to FSA, the FSA national office will require the California State FSA office to provide a formal report within 120 days regarding the results of the county office action taken to reduce DCP base acreage and action taken regarding any improper payments that resulted due to the delay in the base reduction.

### **OIG Position**

We agree with FSA's corrective action. To achieve management decision, FSA needs to provide us with evidence that the FSA national office has, or will by a specified date, required the California State FSA office to provide a formal report within 120 days regarding the results of the county office action taken to reduce DCP base acreage and action taken regarding any improper payments that resulted due to the delay in the base reduction.

### **Recommendation 5, to the FSA Administrator**

Follow up with all other FSA State offices to determine if crop bases were properly removed from the easement lands and to recover any improper farm

subsidy payments. Instruct the State offices to report the results of the determinations to the national office.

### **FSA Response**

The FSA national office will issue a directive by August 31, 2007, requiring all State FSA offices to certify that DCP base acreage has been reduced properly based on all easement information provided by NRCS.

### **OIG Position**

We accept FSA's management decision for this recommendation.

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## **Finding 2**

### **FSA Did Not Remove Crop Bases from GRP Easement-Encumbered Lands**

Unlike EWP and WRP easements (Finding 1), FSA did receive GRP easement information from NRCS. However, FSA county officials in two counties did not remove crop bases from three of five GRP easements. In one county, the official forgot to reduce the crop bases from one easement. In the other county, the official mistakenly believed that one farm's two GRP easements had no crop bases. As a result, producers received improper farm subsidy payments totaling \$20,818 (see exhibit D).

FSA's national office directive GRP-9 states, "County offices shall follow procedures in 1-DCP [*Direct and Counter-Cyclical Program Handbook*] to ensure that GRP acres do not receive both GRP and DCP payments beginning FY 2005. . . . Producers may remove [reduce] their GRP contract acres to receive DCP payments without paying liquidated damages. Producers that elect not to reduce GRP contract acres must remove DCP base acres according to 1-DCP."<sup>13</sup>

In one county office, the program technician was aware of crop bases on a GRP easement but forgot to remove them from the easement. In the other county office, the county executive director mistakenly believed the GRP acres on a farm with two easements were on non-cropland acres. Since non-cropland acres cannot have crop bases, the director thought there were no crop bases to remove from the easement. (See table 2 for more details regarding the five GRP easements.)

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<sup>13</sup> FSA Notice GRP-9, Grassland Reserve Program Direct and Counter-Cyclical Program (DCP) Policy (April 14, 2005).

**Table 2: The Five GRP Easements by County**

| County       | Crop bases Were Not Removed<br>(a) | Crop Bases Were Properly Removed<br>(b) | Sufficient DCP Cropland on Tract<br>(c) | Total Easements<br>(a)+(b)+(c) | Improper Payments Based on Column A |
|--------------|------------------------------------|---|---|--------------------------------|-------------------------------------|
| Yolo         | 1                                  | 1                                       | 1                                       | 3                              | \$8,472                             |
| Colusa       | 2                                  | -                                       | -                                       | 2                              | \$12,346                            |
| <b>TOTAL</b> | <b>3</b>                           | <b>1</b>                                | <b>1</b>                                | <b>5</b>                       | <b>\$20,818</b>                     |

The FSA State office should recover \$20,818 in improper subsidy payments for the GRP easements and ensure proper disposition of crop bases on the three recorded easements. Since only two of the eight counties we reviewed had GRP easements and we found errors in both counties, the FSA State office should require all other county offices with GRP easements to determine if crop bases were properly removed from the easement-encumbered land and recover any improper farm subsidy payments.

**Recommendation 6, to the FSA Administrator**

Direct the California FSA State office to remove crop bases from GRP easement-encumbered lands, and to recover \$20,818 in improper payments from producers who received farm subsidy payments.

**FSA Response**

The California State FSA office will take action to ensure base acreage has been reduced as required and to ensure that debt collection measures are initiated, where applicable.

The FSA national office will require the California State FSA office to provide a formal report within 120 days regarding the results of the county office action taken to reduce DCP base acreage and action taken regarding any improper payments that resulted due to the delay in the base reduction.

**OIG Position**

We agree with FSA’s corrective action. To achieve management decision, FSA needs to provide us with evidence to support the base acreage reductions, copies of the bills for collection, and documentation that accounts receivable for \$20,818 were established for the applicable producers.

## **Recommendation 7, to the FSA Administrator**

Instruct the California FSA State office to require all other county offices with GRP easements to: (1) determine if crop bases were properly removed from the easement land, and (2) recover any improper farm subsidy payments. Instruct the State office to report the results of the determinations to FSA's national office.

### **FSA Response**

The California State FSA office has been working with affected county offices to ensure the provisions regarding DCP base acreage reductions were implemented.

The FSA national office will require the California State FSA office to provide a formal report within 120 days regarding the results of the county office action taken to reduce DCP base acreage and action taken regarding any improper payments that resulted due to the delay in the base reduction.

### **OIG Position**

We agree with FSA's corrective action. To achieve management decision, FSA needs to provide us with evidence that the FSA national office has, or will by a specified date, required the California State FSA office to provide a formal report within 120 days regarding the results of the county office action taken to reduce DCP base acreage and action taken regarding any improper payments that resulted due to the delay in the base reduction.

## Section 2 *Improper Payments Issued Based on Cropping Rights Letters*

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### Finding 3

#### **FSA's Outdated Guidance Allowed Landowners to Receive Improper Subsidy Payments**

FSA improperly allowed landowners who had cropping rights letters to receive farm subsidy payments in the fiscal year the easement was recorded. This occurred because FSA's *Direct and Counter-Cyclical Program Handbook* (1-DCP) was inconsistent with the 2002 Farm Bill—the handbook allowed landowners to receive payments but the bill disallowed this practice. As a result, two landowners were issued improper farm subsidy payments totaling \$74,972 (see exhibit D).

Cropping rights letters issued by NRCS allow landowners to plant a spring crop (if the easement closed after October 1) or to harvest crops that were planted on the land prior to the date the easement was recorded. Prior to 2002, landowners that received a cropping rights letter from NRCS were allowed to receive farm subsidy payments on easement-encumbered land in the year the easement was recorded. However, beginning with FY 2002, the Farm Bill prohibited landowners from receiving these payments on lands enrolled in conservation easement programs.<sup>14</sup>

Between FYs 1999-2005, NRCS' California State office issued 11 cropping rights letters to inform landowners of these rights. Of the 11 landowners who received these letters, 7 received letters subsequent to the 2002 Farm Bill. We reviewed the seven letters and determined that FSA made improper payments to two landowners.<sup>15</sup> Although the 2002 Farm Bill prohibited subsidy payments if the land was enrolled in WRP or EWP, FSA's handbook incorrectly stated that with written documentation (i.e., a cropping rights letter) from NRCS, the landowner could receive a farm subsidy payment in the year the easement was recorded.<sup>16</sup>

An FSA national office official believed that the incorrect language was removed from the handbook after the 2002 Farm Bill was enacted and could not explain how it reappeared. However, our review of the archived handbook amendments<sup>17</sup> on the FSA website disclosed that the language had never been removed from the handbook after enactment of the 2002 Farm Bill. Based on this information, the national office issued an amendment in May 2006 to correct the error.<sup>18</sup> However, we also found that FSA's *Farm, Tract and Crop Data Handbook* (3-CM) still allows WRP and EWP

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<sup>14</sup> Public Law 107-171, sec. 1101(g)(2)(B) and sec. 1108 (May 13, 2002).

<sup>15</sup> Of the remaining five landowners, two did not receive subsidy payments and three had invalid letters because they were dated the fiscal year before the easement was recorded.

<sup>16</sup> FSA's *1-DCP Handbook, Direct and Counter-Cyclical Program*, Amendment 27, par. 426 F (August 24, 2004).

<sup>17</sup> FSA's *1-DCP Handbook, Direct and Counter-Cyclical Program*, Amendments 3–27, par. 426 F (October 18, 2002 to August 24, 2004).

<sup>18</sup> FSA's *1-DCP Handbook Direct and Counter-Cyclical Program*, Amendment 36, par. 426 F (May 2, 2006).

easements to be eligible for farm subsidy payments in the year the easement is filed.<sup>19</sup>

To correct these issues, FSA should revise its procedures to remove any reference that would allow easement-encumbered lands to participate in the farm subsidy program. FSA should also recover \$74,972 from the two producers that improperly received an additional year of subsidy payments. In addition, FSA should instruct all other State executive directors to identify all easements recorded after FY 2001 to determine if improper payments were made in the year the easements were recorded, and effect recovery accordingly.

### **Recommendation 8, to the FSA Administrator**

Modify the *Handbook 3-CM* to remove the reference that cropland enrolled in WRP or EWP is eligible for farm subsidy payments.

#### **FSA Response**

Revision 4 to *Handbook 3-CM* was issued on May 31, 2006, in which subparagraph 26A was amended to specify that acreage enrolled in WRP shall be classified as WRP acreage during the fiscal year in which the easement is filed.

#### **OIG Position**

We agree with FSA's corrective action. To achieve management decision, FSA needs to further revise its *Handbook 3-CM* to remove the reference that cropland enrolled in EWP easement is eligible for farm subsidy payments in the FY the easement is filed.

### **Recommendation 9, to the FSA Administrator**

Direct the California FSA State office to recover \$74,972 from the two producers that improperly received an additional year of farm subsidy payments.

#### **FSA Response**

On May 2, 2006, FSA issued Amendment 36 to *Handbook 1-DCP* which removed the exception erroneously included in program policy that allowed producers to retain DCP payments if NRCS authorized cropping rights on WRP easements. *Handbook 1-DCP*, Amendment 38, was issued on

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<sup>19</sup> FSA's *3-CM Handbook, Farm, Tract and Crop Data*, Amendment 15, par. 27A, Rev. 3, (May 13, 2005).

August 4, 2006, to further clarify action that should be taken by FSA State and county offices.

The California State FSA office will be instructed to review the applicable cases by August 31, 2007, to ensure debt collection measures, where applicable, were initiated. Depending on each applicable situation, FSA may pursue equitable relief as authorized by the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171).

### **OIG Position**

We agree with FSA's corrective action. To achieve management decision, FSA needs to provide us with copies of the bills for collection, and documentation that accounts receivable for \$74,972 were established for the two producers.

### **Recommendation 10, to the FSA Administrator**

Instruct all FSA State executive directors to review the files of any landowners that received cropping rights letters after FY 2001 to: (1) determine if farm subsidy payments were made in the year the easements were recorded, and (2) recover any improper payments. Instruct the State offices to report the results of the determinations to the national office.

### **FSA Response**

As specified in the response to Recommendation 9, on May 2, 2006, FSA removed the exception erroneously included in program policy which allowed producers to receive DCP payments if NRCS authorized cropping rights on WRP easements.

Under those guidelines, FSA offices were instructed to immediately reduce base acreage for the year the easement was filed and future years regardless of whether NRCS authorized cropping on the easement. For 2005 and prior contract periods, FSA offices were instructed to review existing guidelines to determine whether any debts created as a result of the reduced base acreage could be justified under the finality rule provisions as authorized by the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171).

Although the OIG findings indicate that the exception was included in *Handbook 1-DCP* from 2002 forward, our review indicates there was a time period where the procedure regarding cropping rights on restrictive easements clearly indicated that exception was not applicable for WRP. However, FSA agrees that handbook procedure did not meet the restrictions of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171) for all contract periods from 2002 forward.

Therefore, the FSA national office will issue a directive by August 31, 2007, requiring all State offices to certify that DCP base acreage has been reduced properly based on all easement information provided by NRCS as required by current procedure for 2002 and future contract periods. Depending on the nature of each applicable case, equitable relief as authorized by the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171) may be pursued or the finality rule may be applied.

**OIG Position**

We accept FSA's management decision for this recommendation.

# Scope and Methodology

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Our audit reviewed NRCS' and FSA's controls in California over the disposition of crop bases on lands acquired through WRP, EWP, and GRP easements. We selected California because we identified cases in our prior audit where easement-encumbered land with crop bases participated improperly in FSA's farm subsidy program.<sup>20</sup>

We performed fieldwork at NRCS' and FSA's national offices in Washington, D.C.; the Commodity Credit Corporation's information technology service division in Kansas City, Missouri; the California NRCS and FSA State offices in Davis, California; eight NRCS field offices; and eight FSA county offices. See exhibit B for a complete listing of sites visited. We performed audit fieldwork from May 2005 through April 2006.

Nationwide, NRCS spent about \$1.8 billion to acquire WRP, EWP, and GRP easements during FYs 1999-2005. In California, the NRCS State office acquired 180 WRP, EWP, and GRP conservation easements for \$107,437,164 during these years: 141 WRP easements for \$96,310,161, 22 EWP easements for \$9,162,896, and 17 GRP easements for \$1,964,107. We grouped the easements by county and judgmentally selected the eight counties with the most easements and, in general, the highest acquisition costs. There were a total of 100 recorded and pending easements in these counties.

From the 100 easements, we excluded 32 for the following reasons:

- 25 because there were no crop bases on the easement lands;
- 4 because the easements were transferred to other counties outside of our selected counties; and
- 3 because FSA had taken corrective action on the easements based on a recommendation in our prior WRP audit.

The remaining 68 easements (our sample) consisted of 58 recorded and 10 pending easements, which represented 38 percent of the easements in California and over 45 percent of the easement costs.

Cropping rights letters allow producers to plant and harvest crops for another year after the easements are recorded. Since the letters could also make landowners eligible for farm subsidy payments prior to the 2002 Farm Bill,

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<sup>20</sup> OIG Audit Report No. 10099-3-SF, "Wetlands Reserve Program – Compensation of Easements" (August 2005).

we reviewed all 11 letters issued to landowners Statewide by NRCS' State office since FY 1999.

To accomplish our audit, we performed the following procedures:

- Reviewed pertinent laws and regulations. We reviewed all criteria governing conservation easements and the farm subsidy program. We also reviewed the policies established for the proper treatment of crop bases on lands subject to conservation easements.
- Interviewed NRCS and FSA personnel. We interviewed NRCS and FSA officials at the national, State, and local offices to obtain information about easement and farm programs. We also discussed management controls over the WRP, EWP, and GRP easement programs, and assessed the coordination between the two agencies in handling crop bases on lands enrolled in these easement programs.
- Reviewed easement files at NRCS offices. We reviewed the WRP, EWP, and GRP easement files in each selected county. At the field offices, we obtained maps, aerial photographs, and pertinent easement information to determine the location and acreage of each sample easement.
- Reviewed farm records at FSA offices. We reviewed FSA's maps and corresponding farm records for each of the sample easements to determine the amount of crop bases on the easement-encumbered lands.
- Analyzed the treatment of crop bases. We reviewed the farm records to determine if crop bases were properly reduced from the easement lands and, if they were not, we calculated any improper subsidy payments made to producers. We met with FSA State office officials to verify the accuracy of our calculations.
- Reviewed the issuance and use of cropping rights letters. We reviewed all cropping rights letters issued during the scope of our audit.

The audit was performed in accordance with generally accepted government auditing standards.

**Exhibit A – Summary of Monetary Results**

| FINDING NUMBER                | RECOMMENDATION NUMBER | DESCRIPTION   | AMOUNT             | CATEGORY                               |
|-------------------------------|-----------------------|---|--------------------|--|
| 1                             | 2                     | In 33 of 53 recorded WRP and EWP easements, improper farm subsidy payments were made for crop bases on easement-encumbered lands. | \$1,290,147        | Questioned Costs, Recovery Recommended |
| 2                             | 6                     | In three of five recorded GRP easements, FSA did not remove crop bases on easement-encumbered lands.                              | \$20,818           | Questioned Costs, Recovery Recommended |
| 3                             | 9                     | FSA improperly made an additional year of farm subsidy payments to two landowners based on inconsistent guidance.                 | \$74,972           | Question Costs, Recovery Recommended   |
| <b>TOTAL MONETARY RESULTS</b> |                       |   | <b>\$1,385,937</b> |  |

**Exhibit B – Sites Visited**

| ORGANIZATION/ENTITY   | LOCATION  |
|---|---|
| Commodity Credit Corporation  | Kansas City, MO   |
| <p><u>Natural Resource Conservation Service</u></p> <p>National Headquarters</p> <p>California State Office</p> <p>Field Offices:</p> <ul style="list-style-type: none"> <li>- Yolo</li> <li>- Dixon Resource Conservation District</li> <li>- Sutter/Yuba</li> <li>- Colusa</li> <li>- Stanislaus</li> <li>- Tulare</li> <li>- Fresno</li> <li>- Kern</li> </ul> | <p>Washington, D.C.</p> <p>Davis, CA</p> <p>Woodland, CA</p> <p>Dixon, CA</p> <p>Yuba City, CA</p> <p>Colusa, CA</p> <p>Modesto, CA</p> <p>Visalia, CA</p> <p>Fresno, CA</p> <p>Bakersfield, CA</p> |
| <p><u>Farm Service Agency</u></p> <p>National Headquarters</p> <p>California State Offices</p> <p>County Offices:</p> <ul style="list-style-type: none"> <li>- Yolo</li> <li>- Solano</li> <li>- Sutter/Yuba</li> <li>- Colusa</li> <li>- Stanislaus</li> <li>- Tulare</li> <li>- Fresno</li> <li>- Kern</li> </ul>   | <p>Washington, D.C.</p> <p>Davis, CA</p> <p>Woodland, CA</p> <p>Dixon, CA</p> <p>Yuba City, CA</p> <p>Colusa, CA</p> <p>Modesto, CA</p> <p>Visalia, CA</p> <p>Fresno, CA</p> <p>Bakersfield, CA</p> |

## Exhibit C – Lack of NRCS Coordination Caused Improper Payments

| Landowner  | County     | Type of Easement | Easement Recorded | Easement Acres | Crop Bases on Easements | Improper Farm Subsidy Payments |
|--|------------|------------------|-------------------|----------------|-------------------------|--------------------------------|
| <b>NRCS Did Not Ensure FSA County Offices Were Aware of Recorded Easements</b> |            |                  |                   |                |                         |                                |
| 1  | Yolo       | WRP              | 10/6/03           | 83.0           | 35.2                    | \$2,814                        |
| 2  | Yolo       | WRP              | 5/5/04            | 2,608.0        | 1,640.5                 | \$234,957                      |
| 3  | Yolo       | WRP              | 11/5/99           | 85.5           | 61.2                    | \$9,771                        |
| 4  | Yolo       | WRP              | 10/8/04           | 341.9          | 230.8                   | \$6,112                        |
| 5  | Yolo       | WRP              | 8/24/05           | 160.0          | 86.2                    | \$3,590                        |
| 6  | Solano     | WRP              | 12/31/02          | 549.0          | 3.5                     | \$201                          |
| 7  | Sutter     | WRP              | 6/20/03           | 588.0          | 293.8                   | \$24,063                       |
| 8  | Sutter     | WRP              | 3/9/05            | 478.9          | 390.3                   | \$22,910                       |
| 9  | Sutter     | WRP              | 5/12/05           | 551.4          | 544.4                   | \$57,745                       |
| 10   | Colusa     | WRP              | 8/8/00            | 124.6          | 127.5                   | \$81,084                       |
| 11   | Colusa     | WRP              | 6/28/02           | 457.2          | 219.1                   | \$30,339                       |
| 12   | Colusa     | WRP              | 7/21/04           | 104.9          | 103.5                   | \$34,256                       |
| 13   | Colusa     | WRP              | 2/13/03           | 26.7           | 35.7                    | \$20,183                       |
| 14   | Colusa     | WRP              | 5/12/04           | 113.0          | 102.3                   | \$37,080                       |
| 15   | Colusa     | WRP              | 9/8/04            | 55.5           | 51.9                    | \$18,619                       |
| 16   | Colusa     | EWP              | 6/27/02           | 152.3          | 126.0                   | \$76,467                       |
| 17   | Stanislaus | EWP              | 6/23/00           | 202.5          | 13.0                    | \$2,710                        |
| 18   | Tulare     | WRP              | 8/8/00            | 574.5          | 250.6                   | \$15,365                       |
| 19   | Tulare     | WRP              | 4/3/02            | 290.9          | 501.2                   | \$49,932                       |
| 20   | Tulare     | WRP              | 11/5/03           | 632.3          | 130.9                   | \$2,557                        |
| 21   | Tulare     | WRP              | 12/7/04           | 522.6          | 653.5                   | \$12,778                       |
| 22   | Tulare     | WRP              | 8/24/05           | 633.4          | 294.7                   | \$38,851                       |
| 23   | Tulare     | WRP              | 1/31/00           | 1,534.0        | 786.8                   | \$93,488                       |
| 24   | Tulare     | WRP              | 10/14/03          | 433.9          | 364.7                   | \$103,857                      |
| 25   | Tulare     | WRP              | 10/4/01           | 698.4          | 567.9                   | \$43,403                       |
| 26   | Tulare     | WRP              | 10/4/01           | 160.3          | 156.6                   | \$48,973                       |
| 27   | Tulare     | WRP              | 3/2/99            | 320.0          | 213.8                   | \$118,680                      |
| 28   | Tulare     | EWP              | 10/1/01           | 81.9           | 64.5                    | \$5,743                        |
| 29   | Kern       | WRP              | 6/4/01            | 904.9          | 540.5                   | \$89,092                       |
| 30   | Kern       | WRP              | 3/4/03            | 179.2          | 31.8                    | \$623                          |
| 31   | Kern       | WRP              | 2/4/03            | 167.3          | 12.0                    | \$2,466                        |
| 32   | Fresno     | WRP              | 3/13/01           | 77.8           | 12.7                    | \$977                          |
| 33   | Fresno     | WRP              | 8/20/03           | 1,617.1        | 1.1                     | \$461                          |
|  |            |                  |                   |                | <b>Total</b>            | <b>\$1,290,147</b>             |

## **Exhibit D – Improper Payments Due to FSA Errors**

| <b>Landowner</b>   | <b>County</b> | <b>Type of Easement</b> | <b>Easement Recorded</b> | <b>Easement Acres</b> | <b>Crop Bases on Easements</b> | <b>Improper Farm Subsidy Payments</b> |
|--|---------------|-------------------------|--------------------------|-----------------------|--------------------------------|---------------------------------------|
| <b>FSA Did Not Ensure Crop bases Were Properly Removed from Easement Lands</b> |               |                         |                          |                       |                                |                                       |
| 34   | Yolo          | GRP                     | 9/29/03                  | 122.0                 | 122.0                          | \$8,472                               |
| 35   | Colusa        | GRP                     | 9/12/03                  | 192.0                 | 143.7                          | \$12,346                              |
| 36   | Colusa        | GRP                     | 9/12/03                  | 109                   |                                |                                       |
|  |               |                         |                          |                       | <b>Total</b>                   | <b>\$20,818</b>                       |
| <b>FSA Handbook Improperly Allowed Subsidy Payments on Easement Lands</b>      |               |                         |                          |                       |                                |                                       |
| 37   | Colusa        | WRP                     | 5/14/02                  | 102.8                 | 84.5                           | \$18,678                              |
| 38   | Colusa        | WRP                     | 12/27/01                 | 301.5                 | 253.4                          | \$56,294                              |
|  |               |                         |                          |                       | <b>Total</b>                   | <b>\$74,972</b>                       |

# Exhibit E – NRCS Response

United States Department of Agriculture



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

AUG 01 2007

SUBJECT: Office of Inspector General Audit 50099-11-SF

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

This memorandum transmits the Natural Resources Conservation Service's (NRCS) response to the Office of Inspector General (OIG) final report, "Crop Bases on Lands with Conservation Easements in California" (OIG 50099-11-SF).

OIG Recommendation 1.

Provide training for field office staff in California on their responsibilities for notifying the Farm Service Agency (FSA) of recorded easements.

**NRCS Response:**

The Easement Programs Division (EPD) is currently conducting monthly programmatic and administrative training via teleconferences with NRCS State and field office staff in California and other States regarding their responsibilities of notifying FSA of recorded easements. EPD also has scheduled a program review and field office training in California for fiscal year 2008.

Estimated or Final Completion Date: **January 2008.**

If you have questions, please contact Lesia Reed, NRCS Compliance Team Leader, Operations Management and Oversight Division, at (202) 720-6707.

A handwritten signature in black ink, appearing to read "A. Lancaster".

Arlen L. Lancaster  
Chief

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Services

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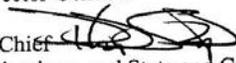
Operations Review  
and Analysis Staff

Audits,  
Investigations, and  
State and County  
Review Branch

1400 Independence  
Ave, SW  
Stop 0540  
Washington, DC  
20250-0540

JUL 31 2007

**TO:** Director, Farm and Foreign Agriculture Division  
Office of Inspector General

**FROM:** Philip Sharp, Chief   
Audits, Investigations, and State and County Review Branch

**SUBJECT:** Audit 50099-11-SF – Natural Resources Conservation Service and  
Farm Service Agency: Crop Bases on Land with Conservation  
Easements in California

Attached is the Farm Service Agency's Deputy Administrator for Farm Programs  
response to the official draft of the subject audit.

Please address any questions to Karren Fava 720-6152.

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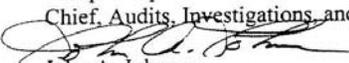
United States  
Department of  
Agriculture

Farm and Foreign  
Agricultural  
Services

Farm Service  
Agency

1400 Independence  
Ave. SW  
Stop-0517  
Washington, DC  
20250-0517

**TO:** Philip Sharp  
Chief, Audits, Investigations, and State and County Review Branch

**FROM:**   
John A. Johnson  
Deputy Administrator for Farm Programs

**SUBJECT:** Response to OIG Audit 50099-11-SF - Natural Resources Conservation Service and Farm Service Agency: Crop Bases on Land with Conservation Easements in California - Your Memorandum of June 25

### Finding 1, Recommendation 2

Direct FSA's California State Office to reduce crop bases from the 33 easement-encumbered lands, and recover \$1,290,147 in improper payments.

### FSA Response

According to staff in the California State FSA Office, NRCS has not yet provided all information regarding DCP base acreage retired through the WRP easements. Although FSA can proceed by ensuring that DCP program benefits are collected on any farm where the acreage enrolled in WRP is found to be on DCP base acres, as required by the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171), without definitive information regarding base acreage retired through the WRP agreement, the reduction may be understated.

Therefore, follow-up action is required by NRCS to provide information regarding any base acres that were retired through the applicable appraisals. Once all base reductions are identified, the California State Office and affected county offices will reduce the base acreage to meet all statutory requirements and initiate debt collection measures, where applicable. Depending on the nature of each applicable case, FSA may pursue equitable relief as authorized by the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171).

FSA will require action to be completed by the California State Office and affected county offices within 120 days following receipt of all necessary documentation from NRCS.

### Finding 1, Recommendation 3

Direct the California FSA State Office to verify whether the crop bases were appropriately removed for the eight pending easements identified during the audit.

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### FSA Response

FSA is not required to reduce DCP base acreage until the easement is filed or recorded. As such, action would not be applicable by FSA regarding pending easements.

NRCS has agreed to notify FSA immediately after the easement is filed so the appropriate action to reduce DCP base acreage can be taken. NRCS has further provided that their offices will provide FSA with a CCC-505 if DCP base acreage was retired through the easement. The DCP base reduction should only be completed following notification by NRCS that the easement has been filed and the CCC-505 and other applicable documentation regarding the easement have been provided to the applicable FSA office.

Therefore, it is recommended that follow-up action be taken by NRCS to ensure that FSA was properly notified when the eight pending easements were filed and to ensure that the required documentation was provided to the applicable FSA office. FSA will then take action, if applicable, to ensure the DCP base acreage has been reduced as required by applicable statutes.

### Finding 1, Recommendation 4

Instruct the California FSA State Office to require all other county offices with WRP and EWP easements to determine if crop bases were properly removed from the easement land and to recover any improper farm subsidy payments. Instruct the State office to report the results of the determinations to FSA's national office.

### FSA Response

The California State FSA Office provided the information that was received from NRCS regarding all WRP and EWP easements to applicable county offices in September 2005. FSA District Directors coordinated with affected county offices to ensure the base acreage was reduced as required by the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171).

However, as specified in Recommendation 1 of this finding, if NRCS has not provided information on the number of acres retired through the easement, FSA can only proceed by ensuring that DCP program benefits are collected on any farm where the acreage enrolled in WRP is found to be on DCP base acres as required by the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171). Required reductions due to base

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acreage retired through the easement would not be recorded and would continue to result in improper payments unless NRCS has provided this information to the applicable FSA office.

Therefore, it is recommended that NRCS certify that all base acreage retired through the easements has been provided to FSA if the easements have been filed.

Once it is determined that the easements have been filed and the necessary documentation has been provided to FSA, the FSA National Office will require the California State Office to provide a formal report within 120 days regarding the results of the county office action taken to reduce DCP base acreage and action taken regarding any improper payments that resulted due to the delay in the base reduction.

**Finding 1, Recommendation 5**

Follow up with all other FSA State offices to determine if crop bases were properly removed from the easement lands and to recover any improper farm subsidy payments. Instruct the State offices to report the results of the determinations to the national office.

**FSA Response**

The FSA National Office will issue a directive by August 31, 2007 requiring all State FSA offices to certify that DCP base acreage has been reduced properly based on all easement information provided by NRCS.

**Finding 2, Recommendation 6**

Direct the California FSA State Office to remove crop bases from GRP easement-encumbered lands, and to recover \$20,818 in improper payments from producers who received farm subsidy payments.

**FSA Response**

The California State FSA Office will take action to ensure base acreage has been reduced as required and to ensure that debt collection measures are initiated, where applicable.

The National Office will require the California State FSA Office to provide a formal report within 120 days regarding the results of the county office action taken to reduce DCP base acreage and action taken regarding any improper payments that resulted due to the delay in the base reduction.

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**Finding 2, Recommendation 7**

Instruct the California FSA State Office to require all other county offices with GRP easements to: (1) determine if crop bases were properly reduced from the easement land, and (2) recover any improper farm subsidy payments. Instruct the State office to report the results of the determinations to FSA's national office.

**FSA Response**

The California State FSA Office has been working with affected county offices to ensure the provisions regarding DCP base acreage reductions were implemented.

The National Office will require the California State Office to provide a formal report within 120 days regarding the results of the county office action taken to reduce DCP base acreage and action taken regarding any improper payments that resulted due to the delay in the base reduction.

**Finding 3, Recommendation 8**

Modify the 3-CM handbook to remove the reference that cropland enrolled in WRP or EWP is eligible for farm subsidy payments.

**FSA Response**

Revision 4 to Handbook 3-CM was issued on May 31, 2006, in which subparagraph 26A was amended to specify that acreage enrolled in WRP shall be classified as WRP acreage during the fiscal year in which the easement is filed.

**Finding 3, Recommendation 9**

Direct the California FSA State Office to recover \$74,972 from the two producers that improperly received an additional year of farm subsidy payments.

**FSA Response**

On May 2, 2006, FSA issued Amendment 36 to Handbook 1-DCP which removed the exception erroneously included in program policy that allowed producers to retain DCP payments if NRCS authorized cropping rights on WRP easements. Handbook 1-DCP, Amendment 38 was issued on August 4, 2006, to further clarify action that should be taken by FSA State and county offices.

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The California State FSA Office will be instructed to review the applicable cases by August 31, 2007 to ensure debt collection measures, where applicable, were initiated. Depending on each applicable situation, FSA may pursue equitable relief as authorized by the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171).

### **Finding 3, Recommendation 10**

Instruct all FSA State Executive Directors to review the files of any landowners that received cropping rights letters after FY 2001 to: (1) determine if farm subsidy payments were made in the year the easements were recorded, and (2) recover any improper payments. Instruct the State offices to report the results of the determinations to the national office.

### **FSA Response**

As specified in the response to Recommendation 9, on May 2, 2006, FSA removed the exception erroneously included in program policy which allowed producers to receive DCP payments if NRCS authorized cropping rights on WRP easements.

Under those guidelines, FSA offices were instructed to immediately reduce base acreage for the year the easement was filed and future years regardless of whether NRCS authorized cropping on the easement. For 2005 and prior contract periods, FSA offices were instructed to review existing guidelines to determine whether any debts created as a result of the reduced base acreage could be justified under the finality rule provisions as authorized by the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171).

Although the OIG findings indicate that the exception was included in Handbook 1-DCP from 2002 forward, our review indicates there was a time period where the procedure regarding cropping rights on restrictive easements clearly indicated that exception was not applicable for WRP. However, FSA agrees that handbook procedure did not meet the restrictions of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171) for all contract periods from 2002 forward.

Therefore, the FSA National Office will issue a directive by August 31, 2007 requiring all State FSA offices to certify that DCP base acreage has been reduced properly based on all easement information provided by NRCS as required by current procedure for 2002 and future contract periods. Depending on the nature of each applicable case, equitable relief as authorized by the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171), may be pursued or the finality rule may be applied.

# ***Glossary of Terms***

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**Crop bases** – The historical average number of acres established with respect to a covered commodity grown on a farm.

**Cropping rights letter** – The State Conservationist will provide each affected landowner with written notification of his cropping rights via a cropping rights letter. The letter advises landowners that: (1) any crops planted before the easement is recorded or the restoration agreement is approved can be harvested, and (2) they may also plant a crop during the spring following the easement recordation when the easement is recorded after October 1.

**DCP cropland** – Land that is currently tilled or has been tilled in a prior year and is suitable for crop production. Crop bases may only be on DCP cropland acres.

**Easement** – An interest in a piece of land defined in a deed whereby the landowner conveys all rights, title, and interest in a property except those rights, title, and interests specifically reserved to the landowner in the easement deed.

**Farm** – A farm is made up of tracts that have the same owner and the same operator. However, land with different owners may be combined if all the land is operated by one producer with all of the following elements in common and substantially separate from that of any other tracts: labor, equipment, accounting system, and management.

**Farm subsidy payment** – A payment made to eligible producers based on established crop bases, payment yields, and a fixed payment rate with respect to the covered commodity on the farm.

**Landowner** – An individual or entity who has legal ownership to the land (holds title to the land).

**Payment yield** – A yield established based on the average or historical (production) yield on the land used in the calculation of the farm subsidy payment.

**Producer** – An owner, operator, landlord, tenant, or sharecropper that shares in the risk of producing, a crop, and is entitled to share in the crop available for marketing from the farm, or would have shared had the crop been produced.

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