

**For:** State and County Offices

**Grassland Reserve Program (GRP) Policy Related to Subsurface Resources**

**Approved by:** Acting Deputy Administrator, Farm Programs



**1 Subsurface Resources Policy**

**A Background**

NRCS sent out policy related to subsurface resources to their Field Offices.

**B Purpose**

Exhibit 1 provides County Offices with subsurface resources policy so they can provide accurate advice to producers.

**Disposal Date**

March 1, 2004  
9-26-03

**Distribution**

State Offices; State Offices relay to County Offices

**Subsurface Resources Policy, National Bulletin 180-3****National Bulletin: 180-3****Subject: CPA -- Grassland Reserve Program (GRP) Policy – Policy Related to Subsurface Resources**

**Purpose.** Provide guidance for assisting with program offers involving leases for subsurface resources.

**Expiration Date.** December 31, 2003

**Background.** Inquiries have been made regarding the impact of GRP rental agreements and easements for participants with properties where the subsurface ownership rights have been severed from the surface ownership rights or situations where the owner is considering severing such rights. Inquiries have also been made regarding various subsurface leasing arrangements. This document serves to formalize Agency policy in advance of receiving a final version of the program manual.

**Policy****1. Accepting Applications on Land Under Lease for Gas, Oil, Earth, or Mineral Rights**

Eligible land on which gas, oil, earth or other mineral rights exploration has been leased or is owned by someone other than the person interested in enrolling acreage in GRP may be offered for participation in the program.

**2. Rental Agreement Requirements**

If any person has an existing lease to the subsurface resources, or someone other than the GRP participant owns the subsurface rights before the land is offered for GRP and the person exercises the right to the subsurface resources from the land that is subject to a GRP agreement, the NRCS State Conservationist shall terminate the CCC-920 on the affected acres without collecting repayment of annual rental payments. Refunds of cost-share payments are required on the affected acres. The State Conservationist shall advise the GRP participant that the land may be reoffered in a subsequent signup if the land meets all other eligibility requirements.

If a person enters into a lease of subsurface resources, or sells rights to such resources after the land is accepted in GRP, and the lessor or owner of the subsurface resources exercises the right to extract the resources from the land subject to a CCC-920, the State Conservationist shall terminate the agreement on the affected acres, collect refunds of both rental payments and cost-share payments on the applicable acres, and notify the participant that the land may be reoffered in subsequent signups if the land meets all other eligibility requirements. The State Conservationist has the authority to waive repayment based on the circumstances of each case, providing the Farm Services Agency State Executive Director concurs with a waiver determination.

**Subsurface Resources Policy, National Bulletin 180-3 (Continued)**

States Conservationists may approve requests to explore participating acres for subsurface resources to determine whether extraction is feasible, provided the exploration is limited to a short time period and any disturbed cover is re-established at the participant's or requestor's expense.

**3. Easement Requirements**

**Under the terms of the GRP easement**, the landowner reserves the right to oil, gas, minerals, and other subsurface resources underlying the easement area, provided that drilling or mining activities are located outside the boundaries of the easement area, unless activities within the boundaries are specified in accordance with the terms and conditions prescribed by the State Conservationist. The terms of the GRP easement do not encumber subsurface mineral rights transferred to a third party prior to the GRP easement acquisition. Therefore the agency must assess the potential impact that the exercise of such third-party rights will have upon the grassland resources, and obtain a subordination of the third-party rights. If a subordination agreement cannot be obtained and the extraction activities are of a nature that the grassland resources cannot be protected for the duration of the easement, the application should not be accepted.

**Contact.** If there are any questions regarding this policy please contact the Grassland Reserve Program Manager, Leslie Deavers, at (202) 720-1067.

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