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Agency Information Collection Activities; National Wildlife Refuge Special Use Permit Applications and Reports

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Agency Information Collection Activities; National Wildlife Refuge Special Use Permit Applications and Reports

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Comment from Anonymous

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General Comment

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The proposed United States Fish and Wildlife Service (FWS) forms include using the self-entitled “Commercial Activities Special Use Permit Application” that has historically been used for “commercial activities” on a “permit” basis - with the permit typically requiring payment - for non-commercial and not permissible activities covered by the Federal Grant and Cooperative Act (FGCAA, 31 USC 6301, etc.). This fact is evidenced by, but not limited to, the FWS Service Manual 620 FW 2 that claims to implement FGCAA Cooperative Agreements via FWS Form 3-1383-C, see 620 FW 2.4 D... “a cooperative agreement between the Service and a cooperator that describes the objectives, roles, responsibilities, terms, conditions of cooperative agriculture on NWRS land. They must be documented on FWS Form 3-1383-C.”

The 620 FW 2 policy clearly contemplates the FGAA at 620 FW 2.3 A ... “What are the authorities for this chapter? A. Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08).”

Using this historic permitting process (i.e. Form 3-1383-C) to skirt the requirements (including documentation requirements) of the FGCAA is unlawful and violates Department of Interior (DOI) regulations, including but not limited to 505 DM 1 and 505 DM 2 (DOI, Departmental Manual). 505 DM 1.2 states in part “It is the policy of the Department to ensure uniform implementation of statutes, Executive Orders, the Uniform Administrative Requirement, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR Part 200 and Financial Assistance Interior Regulation (FAIR) at 2 CFR Part 1402. The FAIR is the DOI supplemental regulation to increase accountability and transparency. It includes areas to include but not limited to conflicts of interests, mandatory disclosure, availability of data, and land. In the development of regulations, policies, and other procedures, the Department requires the participation of affected Bureaus/offices to the maximum extent practicable.” 2 CFR 1402 requires the implementation of 2 CFR 200 for all federal awards: “The Uniform

Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards set forth in 2 CFR part 200 apply to the Department of the Interior. This part adopts, as the Department of the Interior (DOI) policies and procedures, the Office of Management and Budget's (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements set forth in 2 CFR part 200. The Uniform Guidance applies in full except as stated in this part.

3-1383-C does not reference the FGCAA as an authority

In summary the proposed forms in this Docket No. FWS-HQ-NWRS-2024-0094 do not meet the requirements as documentation to enter into FGCAA Cooperative Agreements (CA) unless reviewed, modified and promulgated as such as they currently do not meet the necessary requirement, for CA cannot be entered into on a "bid" basis as a CA must receive something of value and not be required to "pay" for the assistance. Additionally agricultural CA's to grow or graze forage or crops on FWS refuge land must be for the purpose of "assisting private farmers to promote wildlife conservation" (Hymas v. USA, 14-5150, pg. 27, United States Court of Appeals for the Federal Circuit) and yet this docket entry states the purpose is rather " and yet the proposed forms never mention this purpose but offers an alternative purpose at the Supplemental Instructions for Cooperative Agriculture Opportunities with vague and unnamed and apparently various types of "purposes" found on other documents not included in this Docket.

Lastly the Docket forms have no reference to the FGCAA as an Authority. If these forms are used to enter into Cooperative Agreements then the FGCAA should be cited as an Authority and then of course be reviewed and modified to comply with the requirements (laws and policies) of the FGCAA.