



# United States Department of the Interior

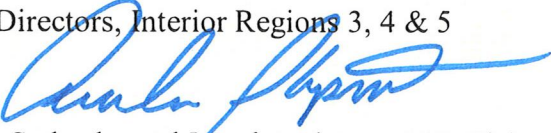
FISH AND WILDLIFE SERVICE  
Washington, D.C. 20240



FEB 26 2020

## Memorandum

To: Regional Directors, Interior Regions 3, 4 & 5

From: Director 

Subject: Drain Tile Setbacks and Legal Action on U.S. Fish and Wildlife Service Wetland Easements

The U.S. Fish and Wildlife Service's (Service) methodology for providing tile setback recommendations on wetland easement tracts is outlined below and utilizes the van Schilfgaarde equation to compute lateral effect distances of drain tile.

Specifically, if the setback distance calculated using the van Schilfgaarde equation lies beyond the up-gradient catchment boundary of a wetland area, the Service sets the drain tile setback for that wetland area at the catchment boundary (rather than applying the calculated distance – see attached Figure). In instances where the calculated setback distance lies within the up-gradient catchment boundary of a wetland area, the setback distance is applied. The distance calculated using the van Schilfgaarde equation is applied for areas down-gradient from the wetland area as the lower elevation and direction of groundwater flow makes the potential for enhanced subsurface drainage more pronounced (see attached Figure). When an easement is purchased, the Service must advise landowners that placement of any structure that diverts surface or subsurface water away from the purchased easement wetland area and results in water starvation of that wetland, essentially drainage, would violate the provisions of the wetland easement.

Once an easement is purchased owners of lands encumbered by Service wetland easements often seek clarity and certainty before investing in tile drainage systems. When the Service works with a landowner to design a tile installation plan, our actions should aim to protect the wetland areas from drainage without needlessly restricting activities on the remainder of the easement. In those situations where the landowner coordinates their tile planning with the Service, and adheres to Service-provided setback distances, the Service will not pursue legal action if it is later determined that the distances are inadequate to protect wetland areas from drainage.

If a landowner does not follow Service-provided setback distances, or changes the tiling parameters on which setback calculations are based, and drainage of the protected wetland occurs, the Service will request that tile within the setback distances be removed to restore the affected wetland area. If the landowner does not voluntarily provide wetland restoration, the Service will review its legal obligations, which includes seeking redress via legal action.

However, no legal action will be pursued until after the landowner is given the opportunity for administrative appeal.

The continued success of the wetland easement program requires the Service to diligently monitor easements for compliance and to pursue legal remedies when appropriate. At the same time, it also requires the Service to work with landowners in good faith and to adopt reasonable policies, which gives landowners greater certainty that placement of their drain tile will not result in draining protected wetland areas. The procedure outlined here achieves that standard.