

**FORAGE PRODUCTION AND HARVEST AGREEMENT PROSPECTUS
AND INVITATION FOR APPLICATIONS
BOSQUE DEL APACHE NATIONAL WILDLIFE REFUGE**

The U.S. Fish and Wildlife Service, Bosque del Apache National Wildlife Refuge (Refuge) is seeking to enter an agreement with one or more agricultural producers (Producer) to operate 1,026 acres of irrigated land at the Refuge for a period of five years. The Producer will operate under a Forage Production Agreement (Agreement) entered into pursuant to 50 C.F.R. 29.2. Under this Agreement, the Producer will be responsible for producing approximately 1.5 million pounds of non-genetically modified (GMO) corn for the benefit of migratory birds on 300 acres in a share-in-kind exchange for the exclusive rights to produce and harvest crops within the Refuge on approximately 726 acres as described in Appendix B and under such conditions as described in Appendix A

Proposals to enter into an Agreement will be accepted at the office of the U.S. Fish and Wildlife Service (Service), Bosque del Apache National Wildlife Refuge, 1001 Highway 1, or can be mailed to: Forage Production Agreement Application, Bosque del Apache NWR, P.O. Box 280, San Antonio, NM 87832. Applications will be received until 12:00 p.m., on January 16, 2015. During the week of January 19, 2015 applications will be opened and a Producer will be selected for a period of operation of five years.

The following Information Meetings regarding this Prospectus and Invitation for Applications have been scheduled:

- *Wednesday, December 17 at 10 a.m., Candlewood Suites Hotel, 4 Military Heights Dr., Roswell, NM 88201*
- *Thursday, December 18 at 10 a.m., Hatch Community Center, 837 Highway 187, Hatch, NM 87937*
- *Friday, December 19 at 10 a.m., Estancia Community Center, 513 Williams Avenue, Estancia, NM 87016*
- *Saturday, December 20 at 10 a.m., at Bosque Del Apache National Wildlife Refuge, 1001 Highway 1, San Antonio, NM 87832*

A list of Special Conditions that apply to this Agreement is attached as Appendix A. Such Special Conditions will become part of the Special Use Permit issued to the successful applicant on an annual basis for agricultural operations on the Refuge.

All applications must be sealed and plainly marked “Forage Production Agreement Application – Bosque del Apache NWR.” Use the attached application form. The Service reserves the right to reject any and all applications.

Direct any questions regarding this Agreement to Refuge Manager Kevin Cobble 575-835-1828 Extension 233.

Attachments

Appendix A - Special Conditions

Appendix B - Maps

Appendix C- Application Form

Appendix D 4 - Certificate of Independent Price Determination

Appendix E - Equal Employment Opportunity Clause

APPENDIX A – SPECIAL CONDITIONS

Forage Production and Harvest Agreement on Bosque del Apache NWR

1. **Land to be produced in agriculture:** During the term of this Agreement, the Producer shall have the exclusive rights to produce agricultural crops in Units 1, 9, 12, 13, 14 and 32 within the Refuge. Production on such acreage as is described in Appendix B attached hereto and incorporated herein is for the primary benefit of wildlife and secondary benefit of the Producer.
 - a. **Forage Crop.** The Producer must plant each year a minimum 300 acres in Units 1B,9,12,13,14 and 32, in non-genetically modified organism (non-GMO) corn, producing 1.5 million pounds of shelled corn each year.
 - b. **Harvest Crop.** The Producer may plant the remaining 726 acres in Units 1,9, 12, 13,14 and 32 in a crop approved by the Service; the Producer will then harvest the crop planted on the 726 acres for their own benefit. The Harvest Crop may include, but is not limited to: silage corn, seed corn, chile, grain, sudan, grass hay and alfalfa (with a maximum of 500 acres allowed for the production of alfalfa or other similar water-intensive crops). Harvest Crop will also be non-genetically modified(non-GMO)
 - c. **Acre Reduction.** As part of the Refuge's long-term management strategy, it will phase out agricultural operations on 89 acres in Unit 1A, as shown in Appendix B as part of a water delivery infrastructure project. The Producer will assist the refuge in this phase out, and may produce Harvest Crop in this area as agreed to by Producer and Refuge to the extent necessary to ensure proper conversion from agricultural land to native habitat. No Forage Crop can be produced in Unit 1A.

2. **Production:**
 - a. **Forage Crop.** Each production year (defined as: February 15 thru December 31) the Producer will provide the Refuge with no less than 1.5 million pounds

of standing-in-the-field-non-genetically-modified-corn for wildlife forage, (“Forage Crop Payment”)

- b. **Shortfall.** To the extent the Producer is unable to provide a minimum of 1.5 million pounds of in-the-field corn, the Producer will compensate the Refuge for the shortfall as follows:
 - i. Within 60 days after determination of actual corn production, provide to the Refuge the balance of poundage due in grain corn. Grain corn (non-GMO) shall be subject to the inspection and approval by the Refuge Manager prior to delivery.
 - ii. In the event the volume of grain corn is not commercially available or upon approval of the Refuge Manager, the Producer may provide in-kind services that equal the commercial value of the poundage of the corn needed for a shortfall payment. In-kind services may include replacement of wells and pumps, purchasing materials for electric fencing, purchase and installation of water control structures such as Langeman gates, purchase and installation of solar panels to offset utility costs of pumping, repair of concrete ditches, combining fields for greater efficiency, purchasing and planting heirloom corn seed, planting of native grass pasture or other improvements to forage production program or infrastructure as determined by Refuge manager.

3. **Annual Agricultural Management Plan:** The Refuge Manager or their designee shall prepare an Annual Agricultural Management Plan (“Annual Plan”) with which the Producer shall comply.
 - a. The Refuge Manager or their designee will directly oversee implementation of the Annual Plan.

 - b. The Annual Plan shall include designated acreage that must be reserved solely for production of the Forage Crop, as well as the Harvest Crop acreage that may be farmed for the benefit of the Producer. The Producer and the Refuge Manager may negotiate to adjust relative acreage based upon Producer’s ability or need, as the case may be, to use less or more acreage in order to successfully produce the Forage Crop share.

 - c. A meeting to develop the Annual Plan between the Service and the Producer will be held in January of every, to determine agricultural operations on the Refuge for the year.

- d. Upon completion of the Annual Plan the Producer will be issued a Special Use Permit, which will allow the Producer access to the Refuge under the terms and conditions outlined in the Annual Plan.
- e. The Producer must operate during the standard operating season for agriculture on the Refuge which is March 1 to October 31 annually.

4. **Obligations of Producer:**

- a. Provide all personnel, equipment, labor and supplies needed to produce agricultural crops including schedule of irrigation water on the acreage described in Appendix B, including but not limited to the acreage necessary to produce the harvest and forage crops.
- b. Furnish the seed fertilizer, labor, materials, and equipment, and bear all expenses incident to the seeding, planting, cultivating, and harvesting of all crops, unless otherwise specified in “Special Conditions.”
- c. All use of seed (non GMO), approved pesticides (approved pesticide list - see Appendix D), fertilizers and any other chemicals, materials, or substances must be pre-approved by the Refuge manager prior to application and use. Producer will be responsible for controlling weeds and vegetation along ditches, roads and infrastructure within farm units. Producers will use Integrated Pest Management practices and will work to reduce overall chemical usage.
- d. Notify Refuge Manager at least three days in advance of any intended harvesting operation; and
- e. Not later than thirty (30) days after each harvest, provide the Refuge manager with records of planting dates, planting rate, field operations, irrigation schedules, production totals of each crop, pesticide applicator’s license number and pesticide use records in accordance with the State of New Mexico Department of Agriculture and U.S. Fish and Wildlife Service regulations.
- f. Perform all necessary required maintenance, repairs and improvements of fields, ditches, and water delivery infrastructure required for the continued agricultural operations.
- g. Perform all maintenance and repairs on wells and pumps used for agriculture.

- h. Pay for all electricity and diesel used to run pumps and wells for Harvest and Forage Crop production.
- i. Perform all repairs identified by the Refuge Manager from damages caused by Producer.
- j. Producer will assist the Refuge with installation and maintenance of electrical fencing around corn fields to reduce animal damage to corn.

5. Obligations of the Refuge:

- a. Provide access to the Harvest and Forage Crop areas during production and harvest season, and any other areas agreed to in writing by the Refuge and the Producer, as further described in paragraph 7 and outlined in Special Use Permit.
- b. Provide temporary parking area for Producer equipment during crop production and harvest seasons and designated areas for storage of oil, gas, chemical, or any other products deemed hazardous or dangerous, as outlined in Special Use Permit.
- c. Will not hold Producer liable for crop loss or failure to meet share-in-kind obligations due to natural disaster. Natural disasters include flooding (including irrigation canal failure), hail, wind (excess of 60 mph) or the inability to irrigate due to lack of water.
- d. Monitor and conduct grain production samples at the end of the harvest season to determine poundage of grain produced using established methods as described in the Doan's Standard Harvest Equation.

6. **Depredation Claims:** At no time during the term of this Contract shall the Producer claim any depredation damage to agricultural crops growing, harvested or stored pursuant to this Agreement by state or federally listed or designated threatened, endangered or listed wildlife species or wildlife species protected under Chapter 17 NMSA. Depredation caused by other species shall be reasonably addressed by the Producer and the Refuge Manager.
7. **Access:** Access will be by check station road and north boundary roads, unless otherwise approved by the Service.

- a. Mandatory schedule for agricultural production. All harvesting of harvest crop must be completed by October 31, unless an extension of Agreement time is given. Extensions will be considered for periods of time lost due to reasons such as wet conditions , exceeding seven consecutive days during the operating season, which is March 1 – October 31. Extensions may be considered for winter crops, agricultural activities with prior approval from the Refuge manager. Extensions must be requested in writing by the Producer within thirty days of the lost time, and before the termination date of the Agreement.
 - b. Access provided to the Producer may be limited during public use seasons and as deemed necessary for wildlife management or public safety reasons by the Refuge Manager. The Producer will be notified prior to these restrictions.
 - c. All Producer motor vehicles will be registered and licensed in compliance with State law and Federal regulations
 - d. The Producer shall pay the United States of America for any unnecessary damage resulting from the operations herein permitted, and shall repair all damages to roads, trails, ditches, and other improvements.
 - e. The Producer will do all in his/her power to prevent and suppress accidental, non-prescribed fires caused by the Producer, and will be held liable for damages and suppression costs resulting from Producer-caused fires, except as may otherwise be allowed under State or Federal laws.
 - f. Storage facilities for oil or gas products will be maintained by the Producer in an area designated by the Refuge. The Producer will take appropriate preventive measures to insure that any spill of such oil or gas products does not enter any stream or other waters, and will report any such spill to the Refuge. Producer is responsible for any cleanup costs associated with any spills.
 - g. The Producer will follow all Refuge regulations. No littering is allowed. No collecting of any animal, mineral or plant parts is allowed.
8. **Interpretation.** The decision of the Regional Director, Region 2, U.S. Fish and Wildlife Service, shall be final in the interpretation of the regulations and provisions governing the agricultural operations covered by this permit.

9. **Modification of Procedures.** Modifications to this Agreement shall be made in writing, with the mutual consent of the Producer and the Refuge Manager. The rights and obligations of the Producer set forth in this Agreement to carry out particular requirements of the Agreement may be assigned, in part, by the Producer to a third party with written consent from the Refuge Manager; although the Producer will be held ultimately responsible for insuring all conditions of this Agreement are met in full. Any deviation from these conditions will result in immediate revocation of this Agreement.
10. **Officials barred From Participating.** No member of, or Delegate to, Congress shall participate in any part of this Agreement or to any benefit that may arise from it, but this provision shall not pertain to this Agreement if made with a corporation for its general benefit.
11. **Water Availability.** The first priority for available water will be meeting endangered and threatened species needs, as well as ensuring compliance with all other laws and regulations. However after these priority uses are fulfilled, it is the policy of the Refuge to ensure that water availability to irrigators is commensurate with other irrigators in the Middle Rio Grande Valley. Several electric water wells and two diesel pumps can be used at the Producer's discretion. Cost of electricity and diesel used to run the wells will be covered by the Producer.
12. **Period of Performance.** The period of performance shall be from February 15, 2015 through November 1, 2019. This Agreement may be terminated by either signing party upon written notice by either party to the other at least sixty(60) days in advance of the date of termination. Termination of this Agreement, however, shall not affect any outstanding orders. This provision is not exclusive and shall not waive other rights and remedies afforded either party in the event of breach of Agreement or default. In such instances the Agreement may be cancelled effective immediately.
13. **Premises.** The Producer, by operating on the premises, shall be considered to have accepted the premises with all facilities, fixtures, or improvements in their existing condition as of the date of this Agreement. At the end of the period specified or upon earlier termination, he shall give up the premises in as good order and condition as when received except for reasonable wear, tear, or damage occurring without fault or negligence. The Producer will fully repay the Service for any and all damage directly or indirectly resulting from negligence or failure on his part, or the part of any of his associates, to use reasonable care.
14. **Use Limitations.** The Producer's use of the described land is limited to the agricultural purposes indicated, and does not, unless provided for in this Agreement, allow him to restrict other authorized entry to, or use of, this area including activities by the Service

necessary for (1) protection and maintenance of the premises and adjacent lands administered by the Service and (2) the management of wildlife and fish using the premises and other Services lands.

15. **Damages**. The United States shall not be responsible for any loss or damage to property including but not limited to growing crops, animals, and machinery; or injury to the Producer, or his relatives, or the officers, agents, employees, or any others who are on the premises by direction or by the consent of the Producer of his associates; or for any damages or interference cause by wildlife or employees or representatives of the Government carrying out their official responsibilities. The Producer agrees to save the United States or any of its agencies harmless from any and all claims for damage or losses that may arise or be incident to the flooding of the premises resulting from any associated Government activity.
16. **Operation Rules & Laws**. The Producer shall keep the premises in a neat and orderly condition at all times, and shall comply with all municipal, county, and State laws applicable to this operations under this agreement as well as all Federal laws and regulations governing National Wildlife Refuges and the areas described in this Agreement. Producer shall comply with all instructions applicable to this Agreement issued by the Refuge Manager. Producer shall take all reasonable precautions to prevent the escape of fires and shall render all reasonable assistance in the suppression of fires on the Refuge.
17. **Compliance**. Failure of the Service to insist upon a strict compliance with any of this Agreement's terms conditions, and requirements shall not constitute a waiver or be considered as a giving up of the Service's right to thereafter enforce any of the Agreement's terms, conditions, or requirements.
18. **Revocation Policy**. This Agreement may be revoked by the Refuge Manager, upon written notice, for nonuse or noncompliance with the terms, hereof, or for violation of general and/or specific laws or regulations governing National Wildlife Refuges. The Agreement is, however, at all times subject to discretionary revocation by the Director of the Service or his/her designee. Upon such revocation, the Service shall make available to the Producer his rightful share of growing crops.
19. **Termination Policy**. If this Agreement is terminated by consent of both parties, for lapse of time, or otherwise, the Producer shall immediately give up possession to the Service representative reserving the rights specified in section H, below. If Producer fails to do so, the Service may invoke such legal proceedings as may be appropriate.

20. **Removal of Producer's Property.** Upon termination or expiration of this Agreement, the Producer may, within a reasonable period as determined by the Refuge Manager, but not to exceed sixty days, remove all crops, materials, structures, and/or other equipment, except items furnished by the Service. Upon failure to remove any of the above items within the aforesaid period, they shall become the property of the United States.

21. **Transfer of Privileges.** This Agreement is not transferable and no privileges herein mentioned may be sublet or made available to any person or interest not mentioned in this Agreement. No interest hereunder may accrue through lien or be transferred to a third party without the approval of the Regional Director of the U.S. Fish and Wildlife Service and the Agreement shall not be used for speculative purposes.

22. **Nondiscrimination in Employment.** The Producer agrees to be bound by the equal opportunity clause of Executives Order 11246, which is attached hereto and made a part of this Agreement.

APPENDIX B – LOCATION MAPS

Forage Production Agreement on Bosque del Apache NWR

APPENDIX C – APPLICATION FORM
Forage Production and Harvest Agreement, Bosque del Apache NWR

Application

Forage Production and Harvest Agreement
Bosque del Apache National Wildlife Refuge

Forage Crop – estimated 300 acres

Harvest Crop – estimated 726 acres

Company Name, Address, primary phone number, email address:

- Please attach a narrative statement summarizing current company operations. If applicable, include years of farming experience, location of farming experience, current acres in production, current crops produced, number of employees, summary of equipment, etc.
- Please attach a narrative statement summarizing any experience and/or knowledge to produce corn (include experience/knowledge/success of producing non-GMO varieties if applicable), as well as other listed crops.

- Please attach a narrative statement describing your proposed production plan including types of crops, timing of planting

Proposed Preliminary Plan for Forage Production and Harvest Crop

Attached is a map of the Refuge agricultural fields and spreadsheet that show field name/number, acreage and if alfalfa is currently present. Please use the provided spreadsheet to propose what your Annual Agricultural Management Plans MIGHT look like during year one, two and three of your operation if you were awarded Agreement. These preliminary plan is not binding and represents no final commitment, the purpose rather is to give general sense of what your agricultural operation MIGHT look like during your first three years.

Considerations when completing proposed three year plan: Units 1 (with restrictions), 9, 12 (12C with restrictions), 13 and 14 and 32 (with restrictions) should all be completed.

- Unit 1A may, in part or in full, be removed from agricultural production in the future for water infrastructure improvements that will benefit operations, but complete this exercise as though it remains in your production.
- Unit 12 C may be taken out of Harvest Crop (in this event acreage will not be counted toward the Producers production payment) and managed by the Refuge as a wetland. In some years it may be used for Forage Crop (in this event acreage will be counted toward the Producers Forage Crop acreage). For the purpose of this exercise do not include 12C as any part of your proposed operation.
- Three fields in Unit 32 can be used by Producer for Harvest Crop in exchange for producing experimental Refuge crops in the remaining three fields. Any field in this unit used for alfalfa production will count toward the 500 acre limit.
- Forage Crop (corn) production will be done on 300 acres within Units 1B, 9, 12, 13, 14 and 32. Remaining acreage that is not in corn production can be used by the Producer for the production of Harvest Crop of their choice (with concurrence from the Refuge manager).
- Acres currently in alfalfa production may be utilized by a Producer or removed for harvest or forage production acreage as the Producer deems necessary. The Refuge has no expectation that alfalfa must remain a component of this Agreement, and at a maximum only 500 acres may remain in alfalfa production; what the Producer grows for the Harvest Crop is at the discretion of the Producer with concurrence from the Refuge manager.

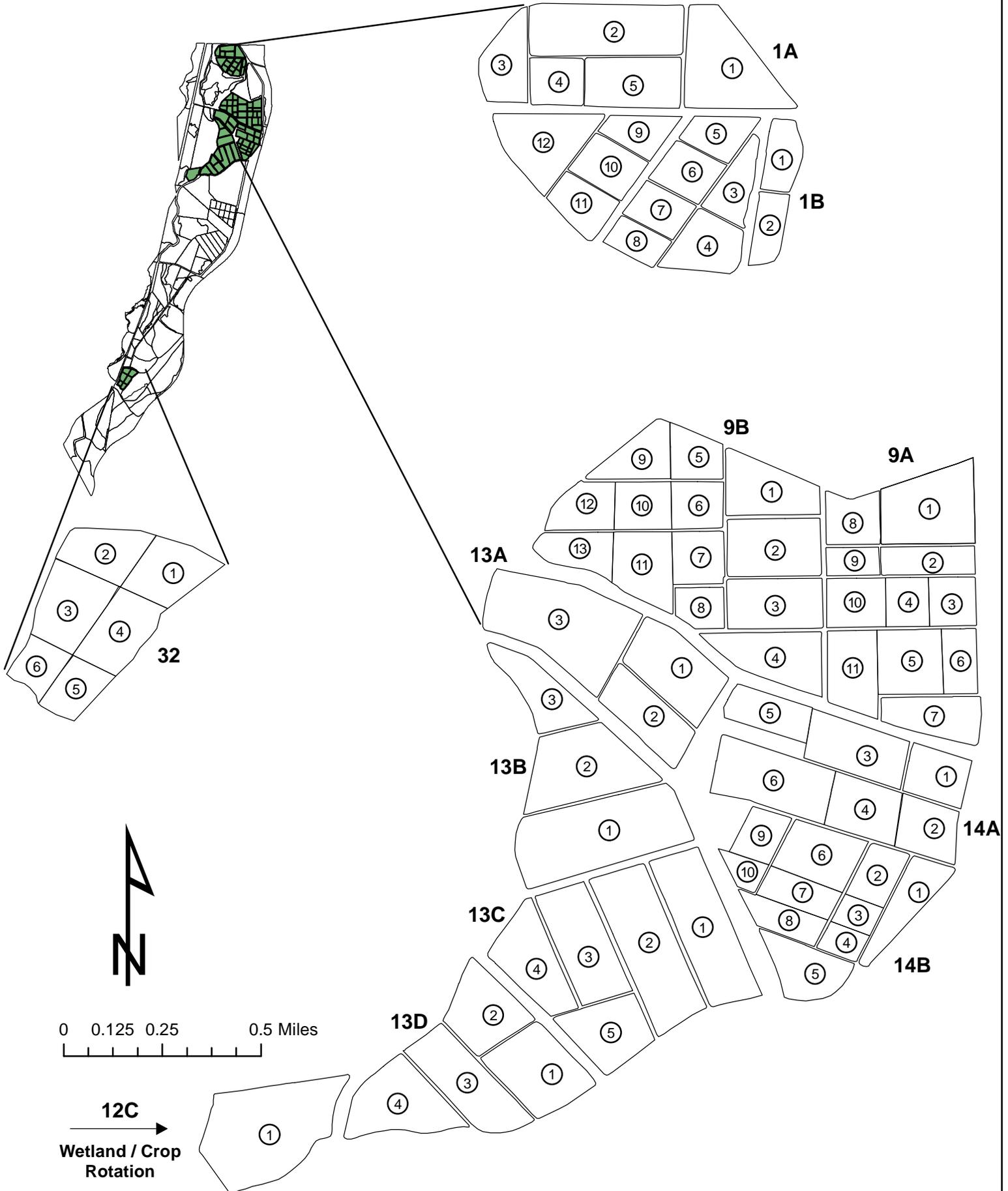
Signature

Date

Name/Title

Bosque Del Apache NWR

2015



	Acres	Alfalfa Acres	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
1A					
1	25.4	25.4			
2	27.7				
3	11.6	11.6			
4	8.4				
5	16.1				
1B					
1	7.9				
2	7.1				
3	8.6				
4	12.3				
5	8.1	8.1			
6	9.3	9.3			
7	8	8			
8	6.3	6.3			
9	7.6				
10	9.9	9.9			
11	9.2	9.2			
12	18	18			
9A					
1	22.5	22.5			
2	11.5				
3	7.8				
4	7.3				
5	14.3				
6	7.7				
7	12.8				
8	9.1				
9	5.8				
10	9.9				
11	13.8				
9B					
1	15.6				
2	18.4				
3	16.3	16.3			
4	17	17			
5	8.2				
6	8.3	8.3			
7	9.3				
8	6.4	6.4			
9	10.3				
10	9.2	9.2			
11	14				
12	9.6				
13	9.3				
	475.9	185.5			

	<u>Acres</u>	<u>Alfalfa Acres</u>	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
<u>12C</u>					
1	37.8				
<u>13A</u>					
1	20.3				
2	15.1				
3	37.8	37.8			
<u>13B</u>					
1	38.6	38.6			
2	25.5	25.5			
3	13.2				
<u>13C</u>					
1	28.4	28.4			
2	31.6				
3	21.9				
4	17.4	17.4			
5	15.7				
<u>13D</u>					
1	20.3	20.3			
2	16.1				
3	20.6	20.6			
4	20.2	20.2			
<u>14A</u>					
1	14.7	14.7			
2	10.9	10.9			
3	17.1	17.1			
4	13.3	13.3			
5	10.5	10.5			
6	22.7				
<u>14B</u>					
1	11.7				
2	8.2	8.2			
3	4.3	4.3			
4	4.3	4.3			
5	12.7	12.7			
6	14.2				
7	8.3				
8	7.7				
9	7.2				
10	3.7				
<u>32</u>					
1	13				
2	12				
3	15				
4	13	13			
5	7	7			
6	6	6			
	618	330.8			