Considerations for Wetland Mitigation

What is mitigation?

Wetland Conservation provisions, introduced in the 1985 Farm Bill as the Food Security Act, are meant to discourage conversion of wetlands for the production of agricultural commodities. The Act states people who convert wetlands after December 23, 1985, for the purpose of making production of agricultural commodities possible, will be ineligible for certain USDA benefits until the functions of the converted wetlands are mitigated or restored. Converted Wetlands (CW) are those that have been drained, dredged, filled or leveled or where woody vegetation has been removed after the enactment date.

The Act allows landowners who wish to alter wetlands to mitigate or replace the lost functions, values and acres. Functions and values are replaced through restoration or enhancement of manipulated wetlands; enhancement of degraded wetlands; or creation of new wetlands.

Mitigation sites may be created, restored or maintained on your land, another person’s land, or land held by a mitigation bank. The owner of the land where mitigation will take place is responsible for the planning, restoration, and filing of easement documents. Mitigation plans must be approved by the Natural Resources Conservation Service (NRCS).

When is mitigation required?

Mitigation is required when a landowner wants to conduct activities that alter wetlands, making the production of an agricultural commodity possible. Conversion activities may include:

- Filling
- Draining (surface ditching or subsurface tiling)
- Land leveling
- Clearing woody vegetation where stumps are removed
- Diverting run-off water from a wetland

What do I need to do to mitigate?

Mitigation requires the replacement of all lost functions, values and acres. With differing functions, the most effective method is replacing wetlands type for type, such as pothole for pothole or riverine for riverine.

Landowners are responsible for developing a mitigation plan which is then approved by NRCS. Plans may be developed by NRCS, as well as qualified consultants. Landowners are encouraged to research qualified, reputable wetland contractors to seek assistance for wetland restoration and other aspects of wetland mitigation planning.
Upon plan approval, the landowner and local district conservationist must sign a mitigation agreement to implement the plan. An easement is required on the restored wetland acres. This Warranty Easement Deed is granted to the Commodity Credit Corporation by and through NRCS and recorded with the local Register of Deeds.

**Are my lands subject to the Wetland Conservation Provisions?**

It is always best to have a conversation with your local NRCS office to discuss details of wetland mitigation. You may wish to have NRCS certify wetlands by signing form AD-1026 at the Farm Service Agency (FSA) office. NRCS will then determine if there are wetlands subject to the provisions.

**When do I need to mitigate?**

To retain USDA program eligibility, mitigation should be completed prior to, or concurrently with, planned conversions. Post-conversion mitigation, as part of a Good Faith Agreement, must be completed within 12 months of FSA granting good faith.

**How does mitigation benefit me?**

Mitigating wetlands allows you to maintain USDA eligibility. It also allows you to “move” wetlands to areas of your farm that are more convenient for your operation.

**What options provide the greatest return on my investment?**

Prior Converted (PC) wetlands are the most easily restored and quickest to show gains in function, therefore, earning the most credits per acre. Farmed Wetlands (FW) earn high and rapid increases in wetland functions. Existing wetlands (W) may be improved by removing accumulated sediments or through an agreement not to crop the site. Because different wetland types have different functions, the easiest method of mitigation is to replace similar type wetlands, for instance, pothole wetlands replaced with pothole wetlands. All mitigation wetlands may earn additional functions by adding an upland buffer to increase habitat and water quality.

**Can I utilize wetlands restored under the Conservation Reserve Program (CRP)?**

After a CRP contract expires, landowners can be compensated to use restored wetlands as mitigation.

**Are there entrepreneur opportunities in Wetland Mitigation?**

Mitigation banking is an efficient and effective method to meet wetland mitigation needs for projects or activities that impact wetlands. The mitigation bank will have an established number of mitigation credits available for use. Mitigation credits will vary depending on the acres of wetlands restored and the extent of drainage prior to 1985. The landowner is responsible for all costs. This includes the restoration work and developing plans and filing the easement. No federal funds may be used for direct or indirect mitigation costs incurred for USDA mitigation.

Potential buyers of mitigation credits include USDA participants who want to drain wetlands; the North Dakota Department of Transportation to mitigate impacts associated with road construction; and airport managers meeting Federal Aviation Administration requirements for wetland removal adjacent to runways.

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