1. Why can’t I drain my wetland?
Farmers across the country have had questions about wetlands since Congress included a wetlands provision in the 1985 Farm Bill, (Food Security Act). During the development of the United States (U.S.), wetlands were considered wasteland. In fact, the Swamp Land Acts in the mid-1800’s turned federal land over to states that would agree to drain the land as the population expanded. In the 200 years since the U.S. was established, up until 1980, more than half the natural wetlands in the U.S. were drained.

After growing national concern about the loss of wetlands and more appreciation for their value in the 1970s, the U.S. adopted a federal policy of “no net loss” of wetlands. Congress included a “Swampbuster” provision in the Food Security Act of 1985 intended to stop the loss of wetlands on agricultural lands; landowners and producers who would further drain wetlands after the provisions went into effect on December 23, 1985, would face potential loss of USDA benefits.

2. What is a Wetland?
For USDA’s purposes, a wetland is defined as land that (1) has a predominance of hydric soils; (2) is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and (3) under normal circumstances does support a prevalence of this vegetation.

3. What do all those wetland labels mean?
Initially, three categories of wetlands were defined:

1) Wetlands drained or altered between December 23, 1985, and November 28, 1990, are called converted wetlands (CW), and farming this land or altering it further can result in loss of USDA benefits.

2) Wetlands that were drained or altered before December 23, 1985, were capable of being cropped, and did not meet farmed wetland hydrology criteria are called prior converted (PC). These lands were grandfathered in, and are not subject to the wetland provisions.

3) Farmed wetlands (FW) and Farmed Wetland Pasture (FWP) are wetlands that were manipulated in some way—usually by installing a tile line or ditch to partially remove water from the area—before December 23, 1985. However, the partial hydrology removal resulted in a site that still functions as a wetland, with surface water or soil saturation that still meets inundation or saturation criteria for a wetland. The FW is a site that was manipulated and farmed prior to December 23, 1985, and FWP is a site that was manipulated but never farmed prior to December 23, 1985. These areas can continue to be maintained at the same scope (same dimensions of ditch or tile) and effect (same effect of manipulation on the wetland) as before December 23, 1985, with no loss of USDA benefits, as long as they are not abandoned. In total, the USDA NRCS uses nearly 20 definitions and labels to describe various wetlands situations.
4. *Why can my neighbor drain a wetland and I can’t?*  
The prairie pothole region is an extremely diverse landscape. Varying rainfall, landscape position and soils each contribute to how wetlands function. Within a square mile, you may have very similar landscapes that function completely different with the same amount of precipitation. The factors being considered in wetland determinations must exist under the normal environmental conditions tied to that site. In addition, the determination considers any man made disturbances that could affect the wetland factors of vegetation, soils, and hydrology. Many times, a site people feel has never been ditched or tiled actually proves to have been ditched or tiled prior to December 23, 1985. This gives the participant the ability to maintain that manipulation.

5. *Can I clean out a drainage ditch or replace a tile line?* A wetland that was manipulated with a surface ditch or tile prior to December 23, 1985 is eligible for an exemption label of FW, FWP, or PC. The new manipulation can be constructed to the extent that it would maintain the original scope and effect of the original tile and/or ditch located at the wetland site.

6. *What are setbacks and how do I know if my setbacks are correct?*  
Setbacks are measured distances from a wetland boundary in which perforated tile or surface ditches may be installed and the result is no detrimental effect on the hydrology of a wetland. Setback distances are determined by three factors where the tile is being installed—soil type, depth of tile, and slope of landscape. Each of these three factors are directly related to the hydrology of a wetland site. Soil properties vary and with each variance there is a different ability for water to move through the soil profile. When planning perforated tile installation the plan must follow all setbacks required. If a plan requires tile to infringe within a setback area then solid non-perforated tile may be placed within the setbacks. Sometimes tile plans are developed to put tile through a wetland. This operation needs to be evaluated by NRCS prior to installation, and the impact to the wetland must be minimized. In most cases, solid tile installed with a tile plow through a wetland will be considered minimal impact. If the wetland has to be drained to install the tile, impact will not be minimal. Utilizing equipment other than a tile plow may not have minimal impact to a wetland. Situations will vary so each one will need to be evaluated by NRCS.

7. *Can I get a redetermination for my tract?*  
Redeterminations are granted only in cases where 1) natural events have altered the site so much that a decision of compliance in farm program eligibility cannot be made or 2) the agency has erred in the decision and the participant’s compliance in the farm program cannot be determined. Either way, the decision lies with the NRCS State Conservationist. Requests for redetermination must be made in writing. Participants do not need to hire anyone to write a letter. They can write the letter themselves, explaining the reason the determination is not useable for them to make decisions on future actions that can be taken to remain in compliance to remain eligible for farm program benefits.

8. *How long will it take to get a wetland determination?*  
Wetland determinations requests are handled in the order in which they are received. The USDA strives to complete and return wetland determinations within six months or less time. Completion time is dependent on weather and time of year the request is received. Much work can be completed offsite, but if a site visit is needed for further investigation the time required depends on the factor needing further evaluation. A soils evaluation requires the soil not be frozen or in standing crop, depending on its location in the field.

9. *What is the NRCS process for onsite mitigation, to replace converted wetlands?*  
A program participant has the option to mitigate the loss of wetlands. The requirement for mitigation is to either restore or create a wetland to take the place of the amount of acres lost and to replace the same amount of function the converted wetland produced. There are two functional assessments utilized most often in South Dakota. One determines function of a wetland in an upland landscape position (pothole wetland/water ponding) and the other determines a wetland in a linear landscape position (sloped wetland/water flowing). A pothole wetland cannot be mitigated to a linear wetland landscape and meet functional requirements or vice versa—the wetland created or restored must provide the same functional units converted and be of the same size in acres of the wetland converted.

10. *Is there any advantage to hiring a consultant?*  
Using a consultant in the wetland determination process is a personal choice. Consultants collect data that is used as supplemental information for determinations, but they may not issue wetland determinations. Consultant provided data is reviewed by an NRCS agency expert for accuracy when the agency expert issues a wetland determination. The agency has sole responsibility to issue a determination because it can directly impact farm program participants’ eligibility.