

Wetland Mitigation & Drainage Districts: Landowner's Rights and Responsibilities

When a drainage district makes improvements, such as increasing the size of the main line, landowners connected to the system need be sure to follow wetland compliance (Swampbuster) provisions.

Swampbuster is a conservation compliance provision introduced in the 1985 Farm Bill. A part of the Wetland Conservation Compliance Provisions, Swampbuster is meant to discourage conversion of wetlands for the production of agricultural commodities. It states that people who convert wetlands after December 23, 1985, for the purpose of making production of agricultural commodities more possible, will be ineligible for 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.

If a wetland exists on your property and you are connected to an improved drainage district system, you are affected. Distance to the main line is not a factor. There are actions you need to take to protect your eligibility for USDA benefits.

Following are some Q&A's to help you understand your responsibilities if your drainage district makes improvements.

I am not sure I have a certified wetland, what should I do?

Ask your local Natural Resources Conservation Service (NRCS) office if a Certified Determination is on file. If not, sign a 1026 form requesting one at the Farm Service Agency (FSA) office. NRCS will then determine if there are wetlands subject to Swampbuster provisions. The following wetland types are subject to Swampbuster provisions:

- Wetlands (W)
- Farmed Wetlands (FW)
- Farmed Wetland Pastures (FWP)

NRCS employees are trained to identify, delineate and certify wetlands. These "certified" determinations stay in effect as long as the land is used for agricultural purposes or until the producer requests a review. If you disagree with NRCS' determination, you can appeal the determination before it becomes final.

If I have a certified wetland, how does the drainage district improvements affect me?

If you have a Farmed Wetland (FW) (a wetland with tile) or Farmed Wetland Pasture, your FW becomes a CW as soon as the Drainage District begins the improvement project (if no mitigation plan is in place). If NRCS determines you have a CW because of a Drainage District project, you will remain eligible for USDA benefits as long as the CW is not planted to a commodity crop or mechanically harvested for forage. Other options to maintain USDA benefits eligibility include mitigation or removing the tile in the Farmed Wetland from the Drainage District system.

What is mitigation?

Swampbuster allows landowners who wish to alter an existing wetland to mitigate or replace the lost func-

Glossary

Prior Converted (PC):

These areas were manipulated and converted to cropland use prior to December 23, 1985, did not support woody vegetation on that date and meet the Farm Bill hydrology criteria for Prior Converted cropland (PC). An agricultural commodity was produced at least once prior to December 23, 1985. There are no Farm Bill restrictions on use.

Artificial Wetlands (AW):

Wetland areas created due to the activities of man. No restrictions on use.

Farmed Wetlands (FW):

These cropland areas were manipulated and planted prior to December 23, 1985, but still meet Farm Bill wetland criteria. They can continue to be farmed as long as no additional manipulation is conducted, such as adding additional surface or subsurface drainage, and the area is not abandoned.

Farmed Wetland Pasture (FWP)

Wetland that was manipulated and managed for pasture or hayland prior to December 23, 1985, and on December 23, 1985, met wetland hydrologic criteria.

tions, values and acres of the existing wetland. These functions and values are replaced through the restoration of a prior converted (PC) wetland, enhancement of an existing wetland or creation of a new wetland.

The mitigation site does not have to be on your farm. It could be part of a mitigation bank, on property owned by your local county or even a neighbor's farm. If you don't own the land, the owner must agree to restoring and maintaining a wetland. The mitigation plan must be approved by NRCS.

When is mitigation required?

Mitigation is required when a landowner wants to conduct any activity that alters natural wetlands, making the production of an agricultural commodity or forage crop more possible. These 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 (i.e. building a diversion)

An improvement to a drainage district is considered one of these activities. Mitigation should occur prior to the drainage district improvements, or a least in conjunction with the project.

What do I need to do to mitigate?

Mitigation requires the replacement of all lost functions, values and acres. Unless an exception is approved by NRCS, mitigation must be with like wetland types (pothole for pothole, riverine for riverine, etc.)

Landowners are responsible for developing a **mitigation plan** which is approved by NRCS. The plan may be developed by NRCS, but the agency is not required to do so. Other sources that can assist with writing the mitigation plan are listed beginning on page 3.

Once there is an approved plan, the landowner must sign a mitigation agreement to implement the plan. The local District Conservationist also signs the agreement. Mitigation requires an easement on the restored wetland acres. This easement is granted to NRCS and recorded on the deed at the court house.

Who pays for the mitigation?

The landowner is responsible for all costs. This includes the restoration work, developing and filing the easement and any land right costs. **NO FEDERAL FUNDS** can be used for direct or indirect mitigation costs.

Can I mitigate on CRP land?

Sites enrolled in any USDA-financially assisted programs (CRP, CREP, WHIP, EQIP, WRP, etc) are not eligible for mitigation. Lands where federal dollars from ANY SOURCE were used to provide restoration, acquisition or land protected by deed restrictions precluding conversion are also ineligible for mitigation.

When do I need to mitigate?

To retain 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 the Good Faith.

Why could I lose my USDA benefits because the Drainage District is working on an improvement project?

Regulation states that individuals within the Drainage District are considered to have caused or allowed the improvement to the drainage system, even if you oppose the improvement project completed by the district.

How does mitigation benefit me?

Mitigating wetlands allows you to maintain USDA benefit eligibility. It also allows you to "move" wetlands to areas of your farm that are more convenient for your operation, while providing wildlife habitat.

For more information, contact your NRCS field office or visit www.ia.nrcs.usda.gov.

Engineering/Environmental Consulting Firms Claiming Experience in Wetland Delineation and/or Mitigation Planning and Design

(Note: The inclusion of individuals or organizations on this list does not constitute any recommendation or endorsement of their qualifications, professional expertise or performance recorded by the Rock Island District, U.S. Army Corps of Engineers or USDA.)

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