

NRCS and Sponsor Responsibilities Watershed Programs

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NRCS Watershed Programs

Watershed Program Overview



Watershed and Flood Prevention
Operations (WFPO) Program



Watershed Rehabilitation (REHAB)
Program



Emergency Watershed Protection (EWP)
Program



Watershed Programs

WFPO program provides technical and financial assistance for the purpose of:

- Flood Prevention
- Watershed Protection
- Public Recreation
- Public Fish and Wildlife
- Agricultural Water Management
- Municipal and Industrial Water Supply
- Water Quality Management

Cost share rate varies from up to 50% to 100%.

Watershed Programs



Watershed REHAB program provides assistance to local project sponsors to:

- rehabilitate aging dams, and/or
- build or augment existing water supplies based on current and future water supply demands.
- Cost share rate is 35% local sponsors and 65% federal



Watershed Programs

Emergency Watershed Protection Program (EWPP)

- EWP assists sponsors in implementing emergency recovery measures for runoff retardation and erosion prevention to relieve imminent hazards to life and property created by a natural disaster and watershed impairment.
- Standard Cost Share Rate up to 75% NRCS, Limited Resource area up to 90% NRCS.



Watershed Programs

Watershed Funding Since 2018

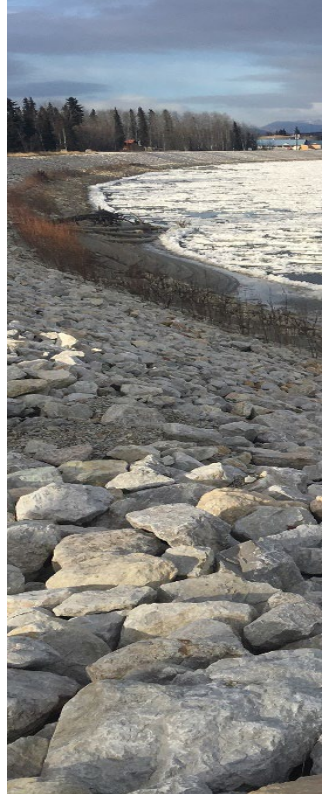
Congressional Appropriations Funding in the Millions

<u>Fiscal Year</u>	<u>WFPO</u>	<u>REHAB</u>	<u>EWPP</u>
2018	\$150	\$69	\$541
2019	\$200	\$10	\$435
2020	\$207	\$39	\$0
2021	\$223	\$12	\$0
2022	\$146	\$5	\$275
2022 (IIJA)	\$500	\$118	\$300
2023	\$122	\$5	\$925
2024	\$61	\$25	\$0
Total	\$1,608 M	\$273 M	\$2,476 M

Watershed Programs

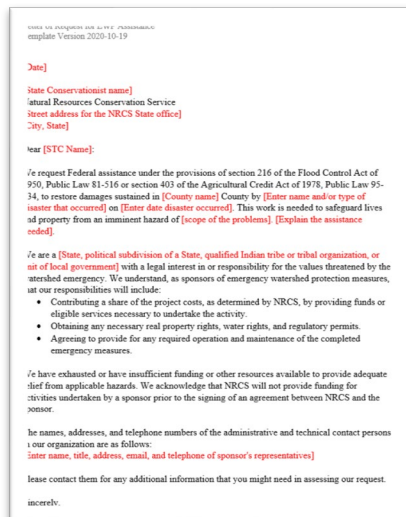
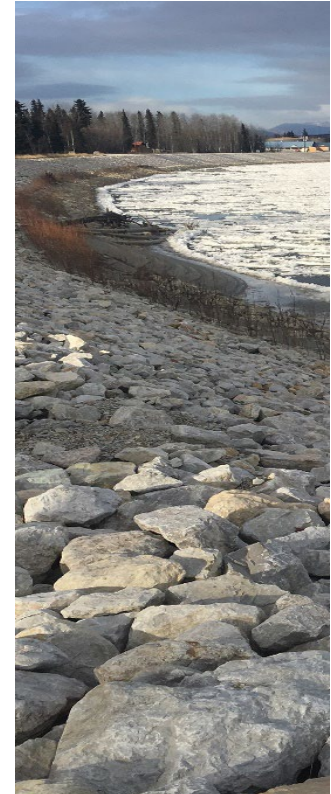
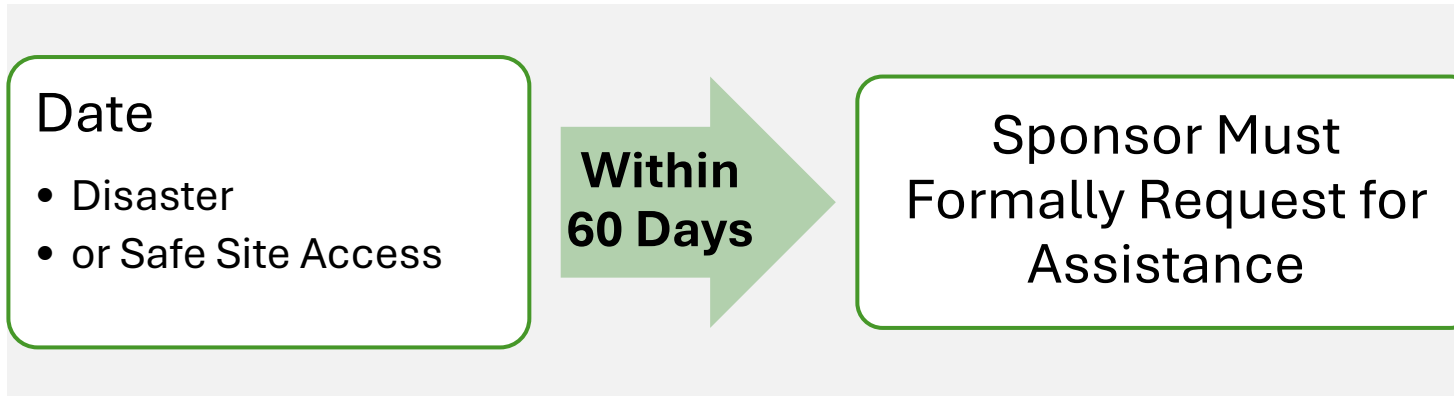
Sponsor Requests for Assistance – REHAB and Watershed Operations

- The sponsor must request assistance in writing to the NRCS State Conservationist.
- Funding is limited
- Priority is given to additional funding requests for current projects, then for new phases in the order construction, design and then planning.
- There is currently a waitlist for funding for REHAB and WSOPs new projects.



Watershed Programs

Sponsor Requests for Assistance - EWP



Template Letter

- A State's EWP Program Manager can provide
- Using template ensures a complete request

Watershed Programs

Eligible Sponsors and Responsibilities



Watershed Programs



Eligible Sponsors

- State Government
- Political Subdivision of State
- Qualified Indian Tribe or Tribal Organization
- Unit of Local Government



NRC Watershed Programs



Sponsors Responsibilities:

1. Power of Eminent Domain and Real Property Rights
2. Permits and Licenses
3. Authority to Levy Taxes
4. Land Treatment above Reservoirs
5. Public Participation
6. Financial
7. Watershed Management
8. Operation, Maintenance and Replacement



NRCS Watershed Programs

Land Rights – Sponsor Responsibility and Costs

- Obtain adequate real property rights (land and water) in accordance with Federal, State, and local laws.
- Complete prior to going to solicitation for construction for EWP, prior to requesting funding for WSOPs and REHAB.
- Adequate to perform the work, including ingress, egress, and operation and maintenance
- Accept all financial and other responsibility for failures to obtain adequate land and water rights.

Utility Relocation – Sponsor Responsibility and Costs

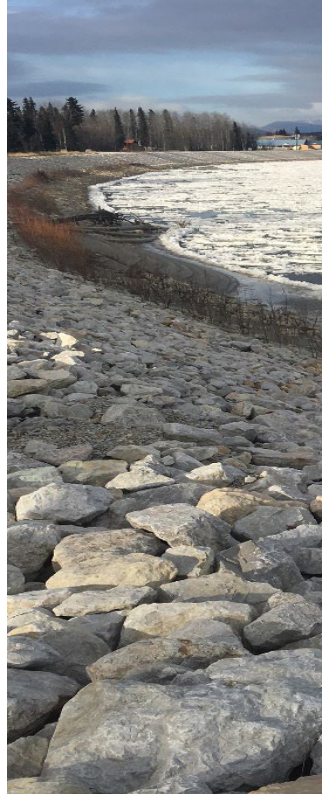
- Arrange and pay for any necessary location, removal, or relocation of utilities
- These costs do not qualify as a Sponsor cost-share contribution



NRCS Watershed Programs

What types of instruments are recorded or put in place when real property rights are obtained for a watershed project?

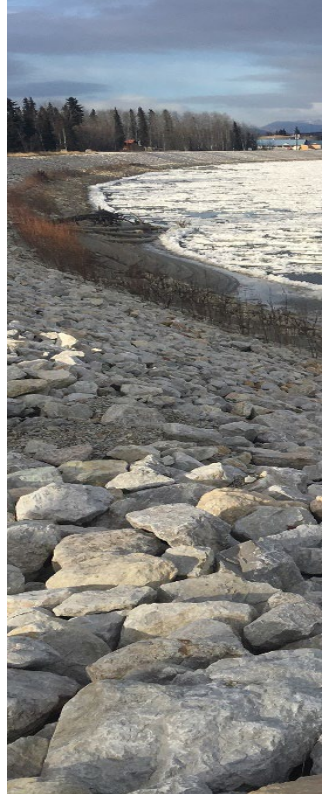
- Easements: These are explicitly granted in writing, typically through a legal instrument such as a real estate deed.
 - Express Easement
 - Prescriptive Easement
 - Easement by Implication or Necessity



Watershed Programs

What types of instruments are recorded or put in place when real property rights are obtained for a watershed project?

- Deeds and Other Instruments: Deeds can be used to convey property rights common types include:
 - General Warranty Deed
 - Special Warranty Deed
 - Other instruments – Deed Restrictions and Settlement Agreements



Watershed Programs

WSOP & REHAB - In-Kind Contributions

- An MOU must be executed with NRCS before being credited with the value of any in-kind contribution.
- In no case will the amount of in-kind contribution exceed the sponsor's share of the cost for works of improvement.
- The maximum cost eligible for in-kind credit is to be the same as that for cost sharing.
- The sponsor will receive no cash reimbursement for in-kind contributions.
- The value allowed as an in-kind contribution for real property acquired by the sponsor by means other than donation cannot exceed the sponsors actual cost.



NRCS Watershed Programs

Permits – Sponsor Responsibility and Costs

- Secure all permits; Confirm that all Federal, State, and local permits have been applied for and received
- All costs relative to obtaining required permits, complying with permit special conditions and permit report will be borne by the Sponsor
- Accept all financial and other responsibility for failures to obtain adequate permits and licenses



NRCS Watershed Programs

Operation and Maintenance

O&M is required when:

- Needed for project to serve its intended purpose
- Needed to ensure that it will not become hazardous

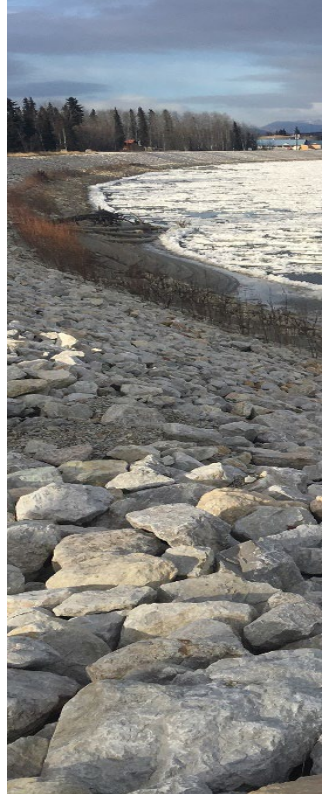
O&M Agreement includes:

- Identifies the sponsor's O&M requirements
- Responsibility extends until project has served its purpose
- Protect the environment and comply with other requirements
- The “method” of performing O&M is at the option of the sponsor



Does NRCS continue to provide informal dam inspections, at the request of the Sponsor for dams that have exceeded their life expectancy?

- Yes, NRCS continues to provide technical assistance after the project life has ended at the request of the sponsor.
- In order to remain eligible for the watershed rehabilitation program, O&M must remain up to date on watershed dams.



NRCS Watershed projects are often parts of complex systems with multiple beneficiaries and purposes. Let's answer a few questions:



What is the process to return watershed sites back to the Landowners once the site has reached its Program Life?

EWP – depending on the practice life of some temporary measures like debris removal or streambank protection these easements may be temporary or permanent depending on the O&M needs of the practice.

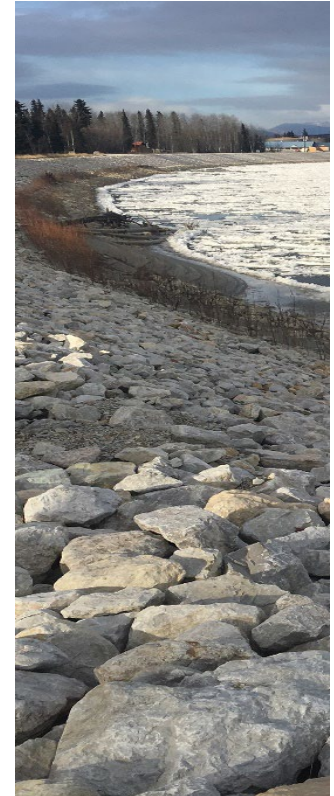
- Access Road
- Debris Removal
- Streambank Protection
- Grade Stabilization Structure



What is the process to return watershed sites back to the Landowners once the site has reached its Program Life?

Watershed Operations and Rehab – may be like EWP in some cases using land treatment practices, but mostly these easements will need to be permanent to be able to operate and maintain the structural practices throughout the program life (50-100 years) so much more long term and would not revert to the landowner.

- Dam
- Channel
- Diversion
- Pipeline



What are steps to transfer sponsorship to a county or the state when a town would like to abandon its sponsorship for a dam?

Modify the Watershed Agreement

Modify the O&M Agreement

Work with the regulator (State Dam Safety) to change ownership of the dam



What do I do if there is encroachment into the easement?

Gardens and irrigation on embankments, spillway, recorded easement issues over time.



What do I do if there is encroachment into the easement?
Overall encroachment into the dam area by development



What do I do if there is encroachment into the EWP easement?





What is meant by
land treatment
above reservoirs?
50 % of the lands
upstream of the
reservoir have a
conservation plan
to help with
sedimentation
issues.



How can irrigation districts handle eminent domain and secure rights of ways when they are operational orgs, not property holders?

Partner, multiple sponsors.



How can irrigation districts handle eminent domain and secure rights of ways when they are operational orgs, not property holders?



Operation, Maintenance and Replacement – Anticipating future needs...



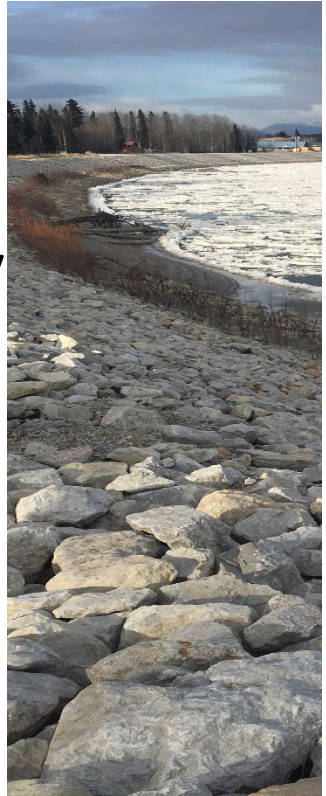
How would a conservation district go about collecting taxes for watershed dam operation and maintenance in Oklahoma?

Mill Levys – Water Conservancy Districts

The mill levy is a property tax. It is applied to a property based on its assessed value. Residents in the area vote to agree to the tax to form the district.

Flood Control Districts/Authorities

Can be via property taxes or \$/water connection.



NRCS Responsibilities



Watershed Programs



NRCS Responsibilities:

- 1. Overall Management of the Watershed Program**
- 2. Watershed Program Information Assistance**
- 3. Preparation of Watershed project Plans/Reviews if not sponsor hired**
- 4. Implementation Assistance**
- 5. Real Property Rights Work Maps**
- 6. OM&R Technical Assistance**
- 7. Certification of land treatment above reservoirs**
- 8. Maintain Official Administrative Record**



NRCS Watershed Programs

Real Property Rights Work Map

NRCS must provide a real property rights work map showing the minimum area and rights needed for each work of improvement and provide to the SLO. NWMC 504.3 for details.

Dams:

The real property rights work map must show the areas where real property rights are required. The real property rights map must also show areas where water may reach an elevation equal to or greater than elevations occurring without the dam in place.

For new construction, the STC must inform the SLO whether the dam's water may reach an elevation equal to or greater than the top of dam. At a minimum, the SLO must acquire all real property rights upstream to the top of dam.

REHAB:

If the SLO does not acquire the rights to top of dam, the SLO must acknowledge the risk of flooding upstream areas and accept that liability in writing as a part of the watershed agreement. At a minimum, land rights must be acquired to an elevation no lower than the maximum water surface elevation during passage of a 100-year, 24-hour storm through the dam.



Other Considerations Including Contracting Methods



Watershed Programs

Federal Contract Method of Installation

NRCS Contracting Officer—Responsibility for solicitation, contract award and administration. Prepares written appointment to Contracting Officer’s Representative (COR) and Inspector

COR—Technical Representative—Requires FAC-COR Certification; Review written appt and duties. some duties include: site showing/visit, knowing contract clauses, specs, drawing, provides guidance to inspector, preconstruction conference, monitors work, documentation for contract mods, invoice review/acceptance, final inspection and acceptance of the work.

Sponsor--Prior to solicitation ensures landrights and permits have been obtained. Sponsor signs Project (Reimbursable) Agreement which documents this and establishes cost share reimbursement.

Federal Acquisition Regulations (FAR)—solicitation/contract clauses; Invitation for Bids (sealed bidding)(FAR Part 14) or Simplified acquisition procedures (SAP)(FAR Part 13)

Close-out—Final Inspection and Acceptance of work; reconciliation of final costs (billed to the Sponsor); NRCS STC sends Sponsor Operation and Maintenance turnover letter.



Sponsor Locally-led Contract Method of Installation

Sponsor Contracting Officer—Responsibility for solicitation, contract award and administration.

NRCS Government Representative (GR)—**Technical Representative**—STC issues written appt and duties; copies the Sponsor. some duties include: site showing/visit (documents progress of construction and questionable practices, knowing specs, drawing, invoice review, verify completion with a site visit).

Sponsor—Cooperative Agreement established between NRCS and Sponsor. Prior to solicitation Sponsor ensures landrights and permits have been obtained. Work performance before agreement signed will not be reimbursed by NRCS.

Procurement Standards—solicitation/contract clauses follows 2 CFR 200.317-327. These are very similar to the FAR.

Close-out—NRCS verifies completion; Sponsors bills NRCS portion of the costs; NRCS STC sends Sponsor Operation and Maintenance turnover letter.



NRCS Watershed Programs

NRCS Federal Contract:

- Federal Acquisition Regulations
- No mandatory Site Showing
- Davis Bacon wage rates
- Weather event during construction (no damages to work; time granted through the Default clause)
- Federal Contractor pays applicable taxes
- No state licensing requirements

Sponsor locally-led Contract:

- 2 CFR 200.317-327
- Generally Mandatory Site Showing
- Davis Bacon wage rates do not apply (when required by Federal program legislation).
- May have Damages to Work clause.
- Local contract may have tax exemption for sales tax, etc.
- State licensing requirements



NRCS Watershed Programs

Sponsor Locally-led Contract—NRCS employee caution

NRCS does not have privity of contract with the Sponsor's contractor.

Do not direct Sponsor's contractor work. Document issues and relay to Sponsor. Any disputes with Sponsor contractor needed to be handled through the Sponsor. See GR and Inspector appointment letter for duties.

Do not assist Sponsor with obtaining landrights.

Ethics and Standards of Conduct—Government business shall be conducted in a manner above reproach, with complete impartiality and with preferential treatment for none; Avoid conflicts of interest or even the appearance of one in Government-contractor relationships; Should have no reluctance to make a full public disclosure of your actions.



NRCS Watershed Programs

Conflicts of Interest

Contracts for design services and construction described in this Agreement shall not be awarded to the Sponsor or to any firm in which any Sponsor's official or any member of such official's immediate family has direct or indirect interest in the pecuniary profits or contracts of such firms. Reference 2 CFR § 200.318 regarding standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award, and administration of contracts.

Example: President of the drainage district accepts bid from a firm they have interest in. NRCS cannot reimburse the Sponsor for any expenses it incurs as a result of the contract award to this firm.

USDA 2 CFR 400.2 Conflict of Interest—Sponsor is to analyze each planned acquisition to identify and evaluate potential organizational conflicts of interest as early in the process as possible and avoid or mitigate potential conflicts.



NRCS Watershed Programs

Questions?

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NRCS Watershed Programs