

Policy for Wetland Banking On BLM Land in Wyoming Background

The State of Wyoming has a Wetland Banking Program established by the Wyoming Wetlands Act of 1991. BLM occasionally receives inquiries concerning our policy for developing wetlands on public lands to be included in the State's Banking Program.

This policy deals with inquiries from the public or other agencies concerning the development of new wetlands or the enhancement of existing wetlands to obtain wetland credits under Wyoming State law. The proposed Wyoming policy is to encourage the creation of new wetlands and the enhancement of existing wetlands in cooperation with outside interests. This policy is totally discretionary on BLM's part. Projects proposed under this policy will be thoroughly reviewed by the field office before any formal agreements are signed.

This process is not intended to be used for speculative ventures in wetland banking. Banking projects on BLM lands must be tied to specific parent projects for a set number of credits; excess wetland credits will belong to BLM. The NEPA documentation for wetland banking projects must address the parent project for which the new wetland will be used as mitigation; that can be as simple as referencing the NEPA document for the parent project.

Wetland Project Strategy

Cooperative agreements with outside parties are the proper authorization for creating new wetlands or for enhancing existing wetlands on BLM lands for the purpose of securing wetland banking credits from the State of Wyoming. A coop agreement normally would state that any facility developed on BLM lands under the agreement would be the property of the United States. It would also state that the proponent would have the right to all or part of the wetland banking credits in compensation for the financial investment that they put into the project.

The Wyoming Department of Environmental Quality (DEQ) will assign the wetland credits to the land owner (BLM), but the coop agreement would be part of the DEQ case file. The project proponents/cooperators would have the right under the coop agreement to use their portion of the banked wetland credit as they see fit.

Operations and maintenance of any facility designed to enhance wetlands or to create new wetlands under a coop agreement will be the responsibility primarily of the proponent/cooperator up to the point where the wetland credit is applied for mitigation. The final value of the credit is not determined until the credit is used; if the project or facility is not maintained until the credit is used, there may be less wetland value (thus less credit) for the proponent when they want to use that credit. If the wetland is not maintained until the time that the credits are applied as mitigation, DEQ may disallow the credit.

If the credits are sold, the proponent still would be responsible for maintaining the project to the extent agreed to in the cooperative agreement; who does the maintenance would be worked out between the new owner of the credits and the original project proponent.

BLM would assume operation and maintenance of the project only to the extent agreed to in the cooperative agreement. BLM would consider its operation and maintenance responsibilities for the project the same as for any other BLM project when allocating limited O&M funds.

The project proponent/cooperator will use any wetland credits created by the development of the project as agreed to under terms of the cooperative agreement. BLM will retain ownership of the project to the extent that it is located on public lands.

DEQ will determine if wetlands are created and the amount of any wetland credits.

Water rights for cooperative agreement projects should be filed in the name of the United States. A water right of any other party in the project, must be tied to the project to the satisfaction of the DEQ for them to issue wetland credits.

The proponent/cooperator will plan the project, and develop (construct) the project to BLM standards to the extent agreed to in the Coop Agreement.

BLM will work with the proponent to assure that the project meets BLM standards including review and approval of engineering plans and actual site location.

BLM will provide necessary resources (personnel, time, etc.) to help develop the project as agreed to in the cooperative agreement and subject to the limitations of funding and manpower available.

Cost sharing agreements will be documented in the cooperative agreement.

In situations where both BLM and the proponent agree to provide funding for the project, both parties could share the wetland credits. BLM can either allow the proponent to use all of the credits, or allow the proponent a pro-rated share of any wetland credits, as documented in the cooperative agreement.

Once a wetlands credit is used for mitigation, DEQ treats the development as a natural wetland for regulatory purposes. No impacts to that manmade wetland would be condoned by the State without appropriate mitigation; the Corps of Engineers will support DEQ on that issue as part of their endorsement of the State's Wetland Banking Program. Natural disasters occurring to the wetland would not trigger a requirement for mitigation even after the wetland credit is used.

Process

1. The proponent requests a cooperative agreement with BLM to develop or to enhance an existing wetland.
 - a. Proponent identifies their desire to develop wetlands on BLM.
 - b. Proponent needs to explain in writing what they want to do. Do they want to create new wetlands, enhance wetlands, etc? Do they have a proposed site?
 - c. The request should provide an estimate of dollars the proponent is willing to spend and any necessary monetary commitment by BLM if applicable.
 - d. The request should provide background of past discussions with DEQ, COE, and any other parties involved with the proposal.

2. BLM evaluates the proposal and
 - a. Makes an initial determination to either proceed with the proposal or to drop the proposal. This is at the discretion of the BLM Field Manager.
 - b. If BLM proceeds with the proposal, BLM will provide feedback on potential project areas to the proponent.
 - c. BLM provides descriptions, schedules, and estimated costs.
3. The proponent brings DEQ, COE, BLM, and any other parties together to reach a verbal agreement on the nature of the work to be done. All parties will help determine if the proposal qualifies for a wetland banking credit; DEQ has the final authority to determine the banking credit.
4. BLM will prepare a formal cooperative agreement with the proponent for the project.
5. After the cooperative agreement is signed by the proponent and the BLM, the proponent will:
 - a. Prepare a project plan in cooperation with the BLM; the plan must meet the BLM engineering standards;
 - b. Complete an EA/EIS analyzing the project plan (including the impacts of the parent project) subject to approval by BLM. The EA may be prepared by a third party contractor acceptable to BLM. The proponent has the lead on the project plan and for preparing the EA. BLM Field Manager is the approving official for the EA, which must be prepared to BLM standards.
 - c. Construct the project in accordance with the cooperative agreement.
6. A post construction conference should be organized by the proponent with all involved parties, primarily the proponent, BLM, and DEQ, to determine the initial wetland credit for the project.

7. The proponent will be responsible for maintenance of the project to maintain the wetland values until the wetlands credit is used; that must be clearly stated in the cooperative agreement.

8. When the credit is applied, DEQ will again evaluate the value of the credit at the site to assure that the wetland values are still there.