

Wetland Conservation Act (WCA) Topic of the Week

WCA and Conservation Programs/Practices

June 24, 2020

WCA topics of the week are a series of informal fact sheets that provide practical information on WCA program implementation in a question and answer format. They are intended to better clarify and summarize certain aspects of WCA implementation and should be considered as supplemental to WCA statutes, rules and any associated BWSR guidance and policy. Information in these fact sheets are subject to change over time.

Question: Are wetlands that are restored via conservation programs (e.g. Conservation Reserve Program or CRP) regulated by WCA?

Answer: Yes, restored wetlands are regulated by WCA.

Question: Are WCA regulatory protections for wetlands that are restored via conservation programs the same as other wetlands?

Answer: No, there are differences. Wetlands that were restored or created for conservation purposes under a contract or easement can be drained to pre-restoration hydrologic conditions without replacement if the contract/easement allows for the wetland to be drained after a specified time (e.g. CRP and some U.S. Fish and Wildlife Service easements).

Question: How does WCA regulate wetland fill and excavation associated with the restoration of a wetland?

Answer: Some wetland restoration projects involve the construction of berms, spillways and other features necessary to restore wetland hydrology in altered landscapes. These constructed features sometimes involve the filling and/or excavation of existing wetland areas. WCA does not consider fill and excavation associated with the construction of these features to be wetland impacts if they are necessary to restore the wetland. However, these features must be associated with: 1) an approved project-specific replacement plan; 2) a wetland bank plan; or 3) a wildlife/fish habitat improvement project approved by a public natural resource agency.

Question: Can a wetland that was restored via a conservation program be used for WCA replacement?

Answer: Yes. WCA allows some replacement credit for permanently protecting a wetland that was restored for conservation purposes under a temporary contract/easement that has expired or been terminated. This provision was used sparingly until BWSR established an agricultural wetland bank (Ag bank) for replacing wetland impacts resulting from agricultural activities. BWSR produced [administrative guidance](#) in 2012 for assessing eligibility and credit for expired, temporary conservation contracts/easements.

Question: How does enrollment in a limited term conservation program such as CRP affect eligibility and crediting for a WCA replacement project?

Answer: Wetland credit allocation for restoration projects in agricultural fields often depends on the recent cropping history of the area. When assessing cropping history, the years that an area was under a temporary conservation easement/contract are not counted in the assessment. The years preceding and following the contract (as applicable) are used instead.

Question: How does enrollment in a limited term conservation program such as CRP affect WCA exemption eligibility?

Answer: The WCA drainage exemption (in part) allows a wetland on agricultural land to be drained if it was planted to crops or in a crop rotation at least eight of the last ten years. The years that an area was under a limited term conservation easement/contract are not counted in the assessment. The most recent ten years, excluding the years the wetland was under easement/contract, are used instead.

Question: Can conservation funds be used for WCA replacement (project-specific or wetland bank)?

Answer: No. Conservation funds cannot be used for wetland replacement purposes. However, wetland restoration projects can be completed using a combination of conservation and non-conservation funds. In such instances, wetland replacement credit can only be allocated for that proportion of the project that was paid for by non-conservation funds.

Question: Does WCA regulate activities associated with soil and water conservation projects and practices?

Answer: Yes, WCA regulations apply. However, certain qualifying soil and water conservation projects that impact wetlands are exempt from replacement requirements.

Question: What are the requirements for soil and water conservation projects to be exempt from replacement?

Answer: The project must be completed in a way that minimizes adverse effects on the wetland, and the Technical Evaluation Panel (TEP) or the Soil and Water Conservation District must determine that the project is beneficial/needed for soil and water conservation. The exemption is intended to apply to unavoidable project wetland impacts where the overall soil and water conservation benefit outweighs the wetland loss. An example of a potentially qualifying project is an actively eroding hillslope requiring stabilization involving wetland fill (assuming adverse effects on the wetland are minimized). An example of a nonqualifying project is a wetland that is excavated and/or filled to provide a stormwater control feature associated with a proposal to construct new homes and associated infrastructure. While this project would technically reduce downstream sedimentation and runoff, it is not a soil and water conservation project to remedy an existing situation. Most qualifying projects are conducted and/or funded by natural resource entities such as a soil and water conservation district or watershed district.