



## Arkansas Water Primer Series: Protecting Arkansas' Wetlands

### Introduction

The U.S. Environmental Protection Agency (EPA) defines wetlands as “areas where water covers the soil, or is present either at or near the surface of the soil all year or for varying periods of time during the year, including during the growing season.” A simple definition of a wetland is an area within a watershed where land and water meet. Once considered of little or no value, today wetlands are recognized as precious resources for nurturing wildlife, purifying waters, checking the destructive power of floods and storms, helping to recharge groundwater supplies and maintaining water tables in adjacent ecosystems.

### Federal Wetlands Protection Programs

Section 404 of the Clean Water Act makes it illegal to discharge dredge or fill materials into the “navigable waters of the United States” without a permit. Basically, discharge of dredged or fill material is not allowed if (1) a practicable alternative exists that is less damaging to the aquatic environment or (2) the nation’s waters would be significantly degraded. Proposed activities are regulated through a permit review process overseen by the U.S. Army Corps of Engineers (the Corps). EPA along with the Corps establishes environmental standards for reviewing permits for discharges that affect wetlands, such as residential development, roads and levees.

### Swampbusters

The conservation-compliance provisions of the 1985 Farm Bill introduced the concept of “swampbuster.” The provisions require all agricultural producers to protect the wetlands on the farms they own or operate if they wish to be eligible for certain USDA farm program benefits. Producers are not eligible if they have planted an agricultural commodity on a wetland that was converted by drainage, leveling or any other means after December 23, 1985, or if they have converted a wetland for the purpose of agricultural commodity production, or for making such production possible, after November 28, 1990.

### Wetland Restoration Program

The Food, Agriculture, Conservation and Trade Act of 1990 created the Wetland Reserve Program (WRP). It is a voluntary program that provides technical and financial assistance to eligible landowners to address wetland, wildlife habitat, soil, water and related natural resource concerns on private lands. The program provides financial incentives for landowners to restore, protect and enhance wetlands in exchange for retiring marginal lands from agriculture.

*According to NRCS' Wetlands Reserve Program 2007, Arkansas is second in the nation in WRP with 190,401 acres enrolled in 2007. Through NRCS, there are wetland projects in 40 counties in each region of the state.*

Enrollment options include permanent easements, 30-year easements and restoration cost-share agreements. WRP is administered by the Natural Resources Conservation Service (NRCS) and funded by the Commodity Credit Corporation.

## State Wetlands Protection Programs

Statewide cooperation on wetland policy issues began in 1993 with the creation of the Water Resources and Wetlands Task Force. Task Force members include representatives from federal and state agencies, environmental organizations, tourism and agricultural interests, and academic institutions, as well as members of the Arkansas General Assembly. The Task Force recommended two legislative initiatives that were passed during the 1995 legislative session.

The Arkansas Wetland Conservation Plan (PLAN) is a comprehensive planning document developed by the Arkansas Multi-Agency Wetlands Planning Team (MAWPT). It combines wetland inventory information and state strategy recommendations to:

- Address wetland issues and concerns
- Identify priority areas for restoration, protection and enhancement through individual Wetland Planning Area reports
- Evaluate existing state agency resources, responsibilities and wetland programs and
- Provide recommendations for plan implementation in a State Wetland Strategy.

More information about MAWPT activities can be found at <http://www.mawpt.org/default.asp>.

## Arkansas Wetlands Mitigation Bank Program

The Arkansas Wetlands Mitigation Bank Program provides off-site mitigation opportunities to Section 404 permit recipients who are required to provide compensatory wetlands. Mitigation banking is the restoration, creation, enhancement or preservation of wetlands by a government agency or private business who sell “credits” in bank sites to permittees.

Mitigation banks are able to consolidate many small, scattered compensatory sites into one large site, which may ensure a more successful aquatic ecosystem. This consolidation also brings together financial resources and scientific expertise that may not be available for small sites. Often, existing sites are improved through the consolidation of sites and resources. Permit recipients must get approval from the Corps, and usually must be within the mitigation bank’s geographic service area.

The Arkansas Wetlands Mitigation Bank is administered by the Arkansas Natural Resources Commission (ANRC). The Director of ANRC, in consultation with the Wetlands Technical Advisory Committee, has the authority to buy or accept donations of mitigation sites and to set prices and sell credits. ANRC may also acquire banking sites through conservation easements negotiated with interested landowners.

Mitigation sites are chosen based on the land’s potential to serve as a wetland, the land’s proximity to other public lands, wetlands or other waters, and state wetland strategies. The Corps determines the number of credits available at a bank site based on the potential for restoring or enhancing the wetland. The potential for restoring the wetland is assessed by a technique called the Hydrogeomorphic Wetland Assessment Method.

Mitigation sites are evaluated by the Wetlands Technical Advisory Committee based on the following criteria:

- Historical wetland trends, including the estimated rate of wetlands loss
- Current and potential contributions to wildlife, fisheries and groundwater quality

*The Wetlands Technical Advisory Committee is made up of the directors, or their designees, of the:*

- Arkansas Forestry Commission
- Arkansas Game and Fish Commission
- Arkansas Highway and Transportation Department
- Department of Arkansas Heritage
- Arkansas Department of Environmental Quality and
- Two public members appointed by ANRC.

- Location of site in relation to permit actions
- Probability of success
- Economic impact of establishing the site
- Costs of land acquisition, establishment and maintenance
- Cost effectiveness of site based on percentage of land in prior converted wetlands to be restored and based on existing wetlands, and
- Requirements of permitting agencies.

### **Riparian Zone Restoration and Wetland Creation Tax Credit**

Arkansas private landowners who are engaged in the development or restoration of wetlands and riparian zones are eligible for a state income tax credit. The Wetland and Riparian Tax Credit Program was created by the Arkansas Private Wetland Riparian Zone Creation and Restoration Incentive Act of 1995. The state recognizes that most of its riparian zones and its potential wetlands are privately owned. By restoring this land, the state hopes to improve water quality, fish and wildlife habitat, recreation, groundwater recharge and flood control.

The program is administered by ANRC in consultation with the Private Lands Restoration Committee. ANRC has established criteria to indicate what costs are eligible for credit and what environmental standards must be met for riparian zones and for wetland. Project activities must meet or exceed program standards and comply with applicable federal, state and local laws.

*The Private Lands Restoration Committee is made up of the directors, or their designees, of the:*

- Arkansas Forestry Commission
- Arkansas Game and Fish Commission
- Arkansas Department of Finance and Administration
- Department of Arkansas Heritage
- Arkansas Department of Environmental Quality and
- Two public members appointed by ANRC.

a project is rejected, the fee is refunded. Prior to enrollment, structural aspects of the project must be reviewed by a professional engineer.

Taxpayers claiming a tax credit under this act may not claim a credit under the Water Resources Conservation and Development Incentives Act of 1985 or any similar act for costs related to the same project. Any portion of a project that is a required mitigation activity is not eligible for tax credit.

Tax credits issued to partnerships or other corporate entities may pass through to their members, managers, partners, shareholders and/or other beneficiaries, but not to other individuals or entities.

The tax credit amount for a taxable year may not exceed the lesser of 1) the total individual or corporate income tax due, or 2) \$5,000 per taxpayer. Unused credit may be carried over for nine years for a total tax credit of \$50,000 per project.

Projects must be completed and functioning within three years, and maintained for a minimum of 10 years past the time of completion. The taxpayer must maintain records, provide notification of project completion and provide proof of maintenance. If the project is not completed within the specified time period, any tax credits already received must be repaid. The project will not be authorized for further tax credits of any kind. If the project cannot be completed because of conditions beyond the taxpayer's control, the project may be extended for one year. Noncompliance with ANRC requirements will result in an assessment according to the Tax Procedures Act.

### **Additional Resource**

Fact Sheet 109 (FSPPC109) – *Glossary of Water-Related Terms* – contains a comprehensive list of terms used in the Arkansas Water Primer Fact Sheet Series.

An enrollment fee of 3 percent of the total approved tax credit is due at the time of application. If

The University of Arkansas Division of Agriculture's Public Policy Center provides timely, credible, unbiased research, analyses and education on current and emerging public issues.

The Arkansas Water Primer Fact Sheet Series was funded by a grant from the U.S. Department of Agriculture with additional financial assistance from the University of Arkansas Division of Agriculture. Original research for the Series was provided by Janie Hipp, LL.M., and adapted by Tom Riley, associate professor and director of the University of Arkansas Division of Agriculture's Public Policy Center, and Lorrie Barr, program associate, University of Arkansas Division of Agriculture's Public Policy Center.

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Printed by University of Arkansas Cooperative Extension Service Printing Services

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FSPPC108-PD-6-08N