



Little Blue Natural Resources District

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NEW DAMS ON PRIVATE PROPERTY PROGRAM

Amended November 8, 2016

OBJECTIVE

The purpose of this program is to participate in planning, design and financial assistance in the construction of dams located on private property. Dams constructed under this program may involve one or more landowners. Public benefits to be achieved include flood control, sediment and erosion control, and water conservation. Other benefits include groundwater recharge, beneficial use of impounded water, and fish and wildlife enhancement.

ELIGIBILITY, DESIGN, AND ENGINEERING

Any landowner in the Little Blue NRD is eligible to request funding assistance through this program. The minimum drainage area for a dam under this program is 80 acres.

A minimum of 75% of the drainage area shall have adequate land treatment or protection as certified by the Natural Resources Conservation Service (NRCS).

Eligible Components: Construction items for which cost share can be received include, but are not limited to: engineering, permits, earth fill, drains, concrete, tube and steel, grass seed and seeding, mulching, fencing, mitigation, construction inspection, minus any state or federal funds available.

All projects for which NRD cost-share is requested must be designed by the NRCS (if eligible under their non-private competition policy) or a qualified and certified private engineer.

COST-SHARE RATE

The NRD's Cost – Share rate on all private dams is 80% of eligible costs. In each case, cost share will be based on the actual final quantities installed, multiplied by the lesser of the County's Average Cost or the Actual Unit Cost submitted by the contractor.

APPLICATION PROCEDURE

- 1) The landowner must contact the County NRCS office in which the proposed structure lies and meet with an NRD representative and NRCS to discuss if the project meets all requirements or if there are other prudent alternatives. The NRCS will also determine if their agency is eligible to design the project.
 - a. Any structure that is over 300 acres of drainage area must be contracted to a private engineering firm. (NRCS non-private competition policy.)

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- 2) The NRCS, NRD staff and an NRD board member that represents that area will conduct a site inspection if a common date can be determined. When performing the initial site assessment, it is recommended that the Inventory and Evaluation form be used to assist in inventorying the proposed solutions and resources concerns. Resource concerns include but are not limited to erosion prevention and control, flood prevention and control, soil conservation, water supply for beneficial use, development-management-utilization and conservation of groundwater and surface water, pollution control, waste control, drainage improvement, development and management of fish and wildlife habitat, development and management of recreational and park facilities, and forestry/range management. After identifying resource concerns and determining a Dam is an effective conservation practice to address those concerns, eligibility of the proposed project must be determined using the LBNRD's Dam Program criteria. An initial concept plan is developed as part of this step.
- 3) The NRCS engineer will develop a preliminary design and cost estimate, while the wetland specialist performs a wetland delineation. In performing the engineering evaluation, reference and consider the engineering challenges. The wetland delineation typically follows the NRCS-CPA-38 Request for Certified Wetland Determination. The Area Engineer, Area Resource Conservationist or State Biologist then determines whether the project activity falls under agricultural exemptions of Section 404 of the Clean Water Act. If the project is not considered an agricultural exemption, a 404 permit must be requested. If the project is considered an agricultural exemption, the NRCS Worksheet 11 process must be completed. Projects will be considered acceptable only after the Worksheet 11 impact analysis and possible wetland mitigation show a high probability the U.S. Army Corps of Engineers Permit could be obtained, and the landowner has provided a commitment to adopting and maintaining the NRCS required mitigation features.
 1. WS 11 Category 1: If no wetlands are present, document according to the NRCS-CPA-38 and continue the planning process.
 2. WS 11 Category 2 and 3: If there are wetlands, the total impact of the footprint of construction must be determined by designing and following the instructions and relevant documentation as required in the NE-CPA-FSA-Worksheet-11 guidance.
 3. WS 11 Category 4: If the above criteria are not met, the US Army Corps of Engineers Individual Permit would be necessary. NRCS currently does not have the staff or capacity to obtain the Individual Permit. The project typically will be referred to an A & E Firm.

If the project is determined to be an agricultural exemption and falls within WS 11 Categories 1-3, a nationwide permit is not required to proceed. However, it is imperative NRCS follow the process above to ensure all documentation is in order should the Corps later require an NW 43. The Corps CANNOT issue an Individual permit after-the-fact. Therefore, only projects that would fall under the nationwide permit 43 will follow this process, and it is imperative to determine wetland impacts before proceeding with the project.

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- 4) The project proposal will be completed and presented to LBNRD Projects and Planning Committee for review and recommendations. Committee recommendations are forwarded to the NRD Board of Directors for consideration and authorization of the project. Once authorization has been granted, engineering design work may proceed and all project costs incurred will be shared between the landowner and the NRD in accordance with the terms of this policy.
- 5) If the NRCS cannot design the project due to the size of the structure as specified above, the following procedures will apply.
 - a. The NRD will provide the Landowner with a list of engineering firms. The Landowner is responsible for contacting an engineering firm or a privately licensed engineer and contracting to conduct the design work on the proposed structure.
 - i. It is recommended that at least three engineers be given the opportunity to quote the services for completion of the project.
 - b. The engineer will develop a preliminary design, wetland delineation and permitting requirement review, and cost estimate. In the proposal phase, an application for preliminary approval must be submitted to the NRD for initial review and cost-share commitment, and authorization to proceed
 - c. Engineering services may include: soils investigations (if needed), project engineering, reservoir capacity and elevations, flood routing and discharge information, filing the proper permits, mitigation (if needed) and an estimate of the project's cost.
 - d. The landowner will pay for engineering fees as the project progresses and submit claims to the NRD no more often than monthly. Under the proposal phase, the NRD will pay a 50% share of the engineering bill to the landowner.
 - e. Upon completion of final design, easement acquisition and permitting, the final plans and cost estimate will be submitted to the Board for project approval and authorization for a construction start.
 - f. After the final design is completed and an agreement is reached to construct the project by the landowner and NRD, the NRD will reimburse the landowner for the additional 30% of the engineering bill.

PROJECT BIDS

The Landowner will be provided a list of construction items and quantities for the project from the NRCS, or engineer. The Landowner is responsible for soliciting bids and is encouraged to contact at least three contractors to establish the maximum cost-share. If three bids can't be obtained, the board will accept the lowest bids of those received for the dam project. The cooperator reserves the right to select whichever bidder he wishes, however, if the low bid is not selected, the Landowner will be responsible for the difference in cost between the lowest bid and the bid selected. A copy of the bids must be provided to the NRD. The NRD will notify the NRCS (or engineer) that bids have been received and the project is ready for construction.

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PAYMENT

Partial payments may be made monthly to the Landowner as the work progresses based on the actual work completed by the contractor. Final payment will be authorized by the Board and issued to the landowner(s) as soon as the structure has received final inspection from the NRCS or private engineering firm and the Project Agreement is signed and returned to the NRD. This final payment will total 80% of the total project cost, including engineering. Contractors may request the NRD to make payment jointly to the landowner and contractor.

COST OVER-RUNS

The NRD Board's action will generally authorize cost-share based on the estimated cost of construction, plus 5% over-run amount. Any job which is expected to exceed the approved amount must be presented to the NRD, and receive approval before payment could be considered for such expenses.

EASEMENTS

All easements required for construction or storage on neighboring land tracts will be the responsibility of the landowner. The NRD can assist the landowner in preparing the easement form. If payment is required for such easements, those costs are not eligible for District cost-share. All easement must be acquired before construction begins.

PERMITS

- 1) The District will assist in obtaining necessary permits for construction and impoundment of water. The costs of the permits will be considered eligible project costs.
- 2) If a project is constructed for irrigation purposes, the landowner will complete the application for an appropriation permit, pay required fees associated with the acquiring the permit and hold the rights.
- 3) When multiple landowners are impacted, each wishing to receive irrigation water, the District will acquire and hold the appropriation permit. The cost of the permit will be divided between the landowners. An agreement will be negotiated indicating the amount of water each landowner shall be entitled to, and all water withdrawn must be metered for a fair allocation of the water.
- 4) Any request to irrigate from the structure shall be accompanied by a conservation plan and an agreement to comply with such plan as completed by the NRCS.

PROJECT COMPLETION

Following final approval of the Board, the landowner/contractor will have one (1) year to complete project construction and submit all bills.

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AGREEMENT

Before receiving payment, the cooperator must be willing to sign a 25-year agreement stating that the project will not be removed, altered or modified so as to lessen its effectiveness without the consent of the district. If removal, alteration or modifications occur which lessen the project's effectiveness or reduce the natural resources benefits for which cost-share was received during the agreement term, the landowner will be required to reimburse the District for a prorated share of the project costs calculated on the years of service provided by the structure.

OPERATION AND MAINTENANCE

The District will provide guidance for the proper operation and maintenance of dams constructed under this program. The landowner is fully responsible for the proper care and maintenance of the project after its completion.

The district policy outlined heretofore shall be the general policy of the district, however, when unusual circumstances dictate, the district may modify their financial contribution to these flood control structures.

The directors of the Little Blue Natural Resources District originally approved this Policy Statement on October 28, 1975. Subsequent amendments are listed below:

Amended: May 31, 1977

Amended: June 27, 1995

Amended: October 30, 1979

Amended: April 29, 1997

Amended: June 29, 1982

Amended: July 10, 2001

Amended: January 3, 1984

Amended: April 12, 2005

Amended: March 28, 1989

Amended: February 10, 2015

Amended: February 26, 1991

Amended: August 11, 2015

Amended: November 8, 2016

ATTEST:

Chairman, LBNRD

Secretary, LBNRD