



DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS-2023-0008]

Notice of Intent to Prepare an Environmental Impact Statement for the Upper Maple River Watershed Plan, North Dakota

AGENCY: Natural Resources Conservation Service, Department of Agriculture.

ACTION: Notice of intent (NOI) to prepare an environmental impact statement (EIS).

SUMMARY: The Natural Resources Conservation Service (NRCS) North Dakota State Office, announces its intent to prepare an EIS for the Upper Maple River Watershed located within Cass, Barnes, Steele, and Griggs Counties, North Dakota. NRCS will examine alternative solutions through the EIS process to provide watershed protection. NRCS is requesting comments to identify significant issues, potential alternatives, information, and analyses relevant to the Proposed Action from all interested individuals, Federal and State Agencies, and Tribes.

DATES: We will consider comments that we receive by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Comments received after the close of the comment period will be considered to the extent possible.

ADDRESSES: We invite you to submit comments in response to this notice. You may submit your comments through one of the methods below:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and search for docket ID NRCS-2023-0008. Follow the online instructions for submitting comments; or
- *Mail or Hand Delivery:* Carol Lewis, Cass County Joint Water Resource District, 1201 Main Avenue West, West Fargo, ND, 58078-1301. In your comment, specify the docket ID NRCS-2023-0008.

All comments received will be posted and made publicly available on www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Christi Fisher; telephone: (701) 530–2091; email: christi.fisher@usda.gov. Individuals who require alternative means of communication should contact USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTAL INFORMATION:

Purpose and Need

The U.S. Army Corps of Engineers (USACE) and U.S. Fish and Wildlife Service (USFWS) are cooperating federal agencies in the watershed planning effort. NRCS is the lead federal agency implementing the National Environmental Policy Act and the National Historic Preservation Act (NHPA). An interagency team consisting of the following agencies are participating in the planning effort: Federal Emergency Management Agency; U.S. Environmental Protection Agency; North Dakota Department of Water Resources (ND DWR); North Dakota Department of Environmental Quality; North Dakota Game and Fish Department; North Dakota Department of Transportation; Cass County Joint Water Resource District; Cass County Highway Department; Cass County Sheriff's Office; Cass County Commission; Cass County Emergency Management; City of Amenia; and City of Casselton. NRCS is consulting on both the National Environmental Policy Act (NEPA) and section 106 of the NHPA with the North Dakota State Historical Preservation Office and 31 Tribal Nations.

The primary purpose of the proposed action is watershed protection. The proposed action will also result in flood damage reduction to cropland, structures, roads, drain ditches, structures, and vehicles in the watershed. Watershed protection goals consist of reducing nutrient loads from the watershed, particularly dissolved phosphorus, and increasing quantity and quality of wetlands and wildlife habitat.

The Watershed Project Plan is authorized under the authority of the Watershed Protection and Flood Prevention Act of 1954 (Pub. L. 83-566), as amended, and the Regional Conservation Partnership Program Project (16 U.S.C. chapter 58, Subchapter VIII). This action is needed because:

- The Upper Maple River Watershed, with a drainage area of 186,400 acres, annually contributes an estimated 30,200 pounds of phosphorus and 331,600 pounds of nitrogen to the Red River downstream. Approximately 88 percent of the watershed is farmed for row crops consisting predominantly of soybeans, corn, spring wheat, dry beans, and sunflowers.
- The average slope of the Upper Maple River is 4 foot per mile and the downstream Red River averages 1 foot per mile. The low topographic relief landscape results in floods over wide swaths of cropland for long durations, allowing for phosphorus dissolution from soils and vegetation into the overlying stagnant floodwaters. Within the Upper Maple Watershed, 17,684 acres of cropland are inundated by the 2-year recurrence interval (RI) flood event, 29,418 acres at the 10-year RI flood, and 37,246 acres are inundated by a 100-year RI flood.
- In addition to generating nutrient transport from cropland to the Maple River, the average annual flood inundation of 12,600 acres of cropland generates \$2.1 million annual damages to agricultural producers. Total economic losses due to flooding, considering damage to cropland, structures, roads, drain ditches, structures, and vehicles in the watershed are estimated at \$3.8 million a year.
- Agricultural non-point source nutrient loads in the Red River are of international significance. The Red River discharges to Lake Winnipeg, the 10th largest freshwater lake in the world, also designated one of the

most eutrophic large lakes¹ in the world. Eutrophication has resulted in negative effects on the aquatic food web within the lake, resulting in declines to critical species which support recreational and commercial fisheries, tourism, and subsistence fishing of indigenous people. While the Red River contributes only 10 to 15 percent of overall annual runoff to the lake by volume, it contributes 69 percent of the total phosphorus load, largely in the form of inorganic dissolved phosphorus, and it is also a major contributor of nitrogen. Nitrogen loads have remained relatively stable in the Red River since 2000, however phosphorus loads at the U.S. and Canadian border have continued to steadily increase over the last two decades despite significant USDA-NRCS program investments in the installation of on-farm conservation practices throughout the North Dakota and Minnesota portions of the Red River Basin.

- Cropland conservation practices promoted by NRCS are effective at reducing particulate bound phosphorus, nitrogen, and sediment loss; however, have been largely ineffective in reducing dissolved phosphorus runoff from cropland in this watershed. This is demonstrated not just in the upward trend of dissolved phosphorus at the U.S. Geological Survey (USGS) gauge on the international border, but through published research from Red River Basin study sites. Other flood prone, flat, cold climate, agricultural landscapes with predominantly fine-grained soils, such as those found in Finland, Sweden, and the Netherlands, experience similar challenges with dissolved phosphorus management.

¹A eutrophic lake is rich in nutrients and supports a dense phytoplankton or plant population, the respiration and decomposition of which results in depletion of dissolved oxygen levels. Eutrophication generates adverse effects on aquatic species due to zones of low dissolved oxygen in the lake and impacts recreation, public safety, and drinking water supply due to algal blooms on the lake surface.

- Federal investment in nutrient reduction within the Red River Basin is an important contribution to the Boundary Waters Treaty (BWT) obligation of the United States. Article IV of the BWT states that “boundary waters or waters flowing across the boundary shall not be polluted to the injury of health and property to the other.” The International Joint Commission (IJC) acts as the arbitral body for the BWT, with the Red River Basin Commission (RRBC) established as a sub-entity between the two countries for management in the international Red River Basin. In 2020, based on the recommendations of the RRBC, the IJC adopted nutrient concentration objectives for the international border crossing of the Red River. Meeting the target for phosphorus will require an approximately 50 percent reduction in the average concentrations from the last two decades, which in turn will require implementation of new and innovative techniques for phosphorus reduction from cropland. U.S. negotiations with the Canadian government for similar investments to protect U.S. waterways from pollutants originating in Canada, through the IJC, will be bolstered by U.S. investments in the Red River Basin.
- The Prairie Pothole Region (PPR) in the northcentral Great Plains is one of the most threatened waterfowl habitats in the United States. The Red River Valley is one of the largest artificially drained landscapes in the world, with hundreds of miles of publicly owned drainage ditches, privately owned lateral ditches, and thousands of acres of surface tile drains. The remaining wetlands and grasslands of the PPR are one of the most productive areas in the world for breeding waterfowl and are important habitat for migratory grassland and shore birds as well. Drainage of remaining wetlands continues in the region, from 1997 to

2009 more than 50,000 individual wetlands were lost within North Dakota alone, a -3.3 percent overall change.

Preliminary Proposed Action and Alternatives

The Upper Maple Watershed planning process was initiated in 2016 with a public scoping meeting, which was not advertised in the *Federal Register* because it was assumed that an Environmental Assessment would be completed for the project. Through the course of the planning process since 2016, 38 different alternatives were evaluated with comments solicited. Based on technical analysis results and comments, all but one alternative was selected. Both the EIS and the second public scoping meeting, dated May 30, 2023, will provide a summary of the preliminary alternatives analysis and opportunity for input. The EIS is expected to evaluate two alternatives: one action alternative and one no action alternative. The alternatives we intend to carry forward to final analysis are:

Alternative 1 – No Action: Taking no action would mean that no federal action would be taken in the Upper Maple River Watershed and implementation of significant flood damage reduction or watershed protection projects would not occur. The watershed will continue to contribute an average of 19,841 pounds of phosphorus and 50,223 pounds of nitrogen annually to the Maple River, and the downstream Red River and Lake Winnipeg. Wetlands and wildlife habitat will remain unchanged barring a significant change in federal conservation programs.

Alternative 2 – Upper Maple River Site 2A (Proposed Action): Upper Maple River Site 2A would be a multi-purpose dry dam with interior features designed and operated for the purpose of dissolved phosphorus (DP) and nitrogen reduction, and wetlands and uplands managed for wildlife habitat. The primary dam structure would provide 2,863 acre-feet of temporary (less than 10 days inundation at the 10-year recurrence interval flood) floodwater retention for a 59.7 square mile drainage area and

would consist of a 2.3-mile embankment with a maximum height of 31 feet, 48-inch principal spillway conduit, and structural concrete auxiliary spillway. Reduction of dissolved inorganic phosphorus will be through two primary means. The first involves construction and operation of three shallow retention cells, totaling 240 acres, on the interior of the dry dam to which water would be routed and held to depths of 2 to 3 feet through the growing season. Vegetation would uptake DP as it grows and in the early fall the cells would be drained via automated control structures and tile drains below the cells to allow vegetation to be cut, baled, and removed from cells prior to the first frost in 2 out of 3 years. The second primary means of DP reduction occurs through reducing the extents, frequency, and duration of cropland inundation downstream of the dam through modification of the peak flow hydrograph. The alternative would also result in enhancement of approximately 200 acres of existing wetlands, and enhancement of approximately 500 acres of uplands which would be managed to maximize wildlife habitat benefits.

Summary of Expected Impacts

An NRCS evaluation of this federally assisted action indicates that the proposed alternative may have a significant local, regional, national, or international impact on the environment. Hydrologic impacts include peak flow reductions of 82 percent and 56 percent of the 10- and 100-year recurrence interval flood events immediately downstream of the retention site, and 14 percent and 19 percent of the 10- and 100-year recurrence interval flood events at the downstream confluence between Maple River and unnamed tributary which site 2A is located. Immediately downstream of the retention site, average annual loads of total phosphorus, total nitrogen, and total suspended solids are reduced by 60 percent, 66 percent, and 38 percent respectively. The proposed alternative would result in a total loss of 21.4 acres of wetlands through fill placement, excavation, which will be mitigated via onsite wetland restoration. The project is expected to generate a net

increase of 230.3 acres of wetlands and enhances approximately 30 acres of existing wetlands because of restored hydrology and vegetative communities, and enhancement of approximately 500 acres upland wildlife habitat for the benefit of migratory birds and other wildlife species. Short term negative impacts during construction are anticipated to be local only, and may occur in relation to soils, vegetation, noise, and traffic.

Anticipated Permits and Authorizations

The following permits and other authorizations are anticipated to be required:

- *CWA Section 404 permit.* Implementation of the proposed federal action would require a Clean Water Act (CWA) Section 404 permit from the U.S. Army Corps of Engineers, which is a cooperating federal agency on the planning effort. Consultation is ongoing and no significant challenges are anticipated given the overall environmental benefits of the project.
- *CWA Section 401 permit.* The project would also require water quality certification under Section 401 of the CWA and permitting under Section 402 of the CWA (National Pollutant Discharge Elimination Permit), both of which would be issued by the North Dakota Department of Environmental Quality, which is participating on the interagency team for the watershed plan. Consultation is ongoing and no significant challenges are anticipated given the overall environmental benefits of the project.
- *Permit to Construct or Modify a Dam.* The project will require authorization from the ND DWR for construction of a dam. ND DWR is participating on the interagency team for the watershed plan and has also provided funding for the planning effort. No significant challenges are anticipated given the project is being designed to meet State of North Dakota dam safety standards.

- *Water Appropriation Permit.* The project may require a conditional water use permit from ND DWR for construction of a dam that will temporarily retain water during flood events. ND DWR is participating on the interagency team for the watershed plan and has also provided funding for the planning effort.
- *Floodplain Permit.* The project will require a floodplain development permit from Cass County. Cass County is participating on the interagency team for the watershed plan and no significant challenges are expected given the beneficial flood damage reduction effects of the project.
- *NHPA Section 106 Consultation.* Consultation with 31 Tribal Nations and the North Dakota State Historical Society is ongoing, as required by the NHPA. To date no concerns have been raised about NHPA, however consultation is ongoing.

Schedule of Decision-Making Process

A draft EIS will be prepared and circulated for review and comment by agencies and the public for at least 45 days per 40 CFR 1503.1, 1502.2, 1506.11, 1502.17, and 7 CFR 650.13. The draft EIS is anticipated to be published in the *Federal Register* approximately 6 months after publication of this NOI. A final EIS is anticipated to be published within 6 months of completion of the public comment period for the draft EIS. NRCS will then decide whether to implement one of the alternatives as evaluated in the EIS.

NRCS will provide technical and financial assistance for the proposed project through the NRCS Watershed Protection and Flood Prevention Program if an action is selected. A Record of Decision will be completed after the required 30-day waiting period and will be publicly available. The responsible Federal official for the NRCS is Nathan Jones, North Dakota Acting State Conservationist.

Public Scoping Process

Public scoping meetings will be held to further develop the scope of the draft EIS. A preliminary scoping meeting was held on February 24, 2016, in Casselton, ND. An additional public scoping meeting was held on May 30, 2023. The meeting was virtual only. A recording of the meeting may be accessed at: <https://www.nrcs.usda.gov/conservation-basics/conservation-by-state/north-dakota/upper-maple-river-watershed-plan>.

Comments received for both meetings, including names and addresses of those who comment, will be part of the public record.

NRCS will coordinate the scoping process as provided in 36 CFR 800.2(d)(3) and 800.8 (54 U.S.C. 306108) to help fulfill the NHPA, as amended, review process. The USACE and USFWS have declined to participate in the NRCS led NHPA process and instead intend to use their agency specific NHPA processes.

Identification of Potential Alternatives, Information, and Analyses

NRCS invites agencies, Tribes, and individuals who have special expertise, legal jurisdiction, or interest in the Upper Maple Watershed and the Red River Basin to provide comments concerning the scope of the analysis and identification of potential alternatives, information, and analyses relevant to the Proposed Action in writing.

Authorities

This document is published pursuant to NEPA regulations regarding publication of a notice of intent to issue an EIS (40 CFR 1501.9(d)). The EIS will be prepared to evaluate potential environmental impacts as required by section 102(2)(C) of NEPA, the Council on Environmental Quality regulations (40 CFR parts 1500–1508); and NRCS regulations that implement NEPA in 7 CFR part 650 and 7 CFR 622. Watershed planning is authorized under the Watershed Protection and Flood Prevention Act of 1954, as amended, (Pub. L. 83–566) and the Flood Control Act of 1944 (Pub. L. 78–534).

Federal Assistance Program

The title and number of the Federal Assistance Programs, as found in the Assistance Listing,² to which this document applies is 10.904, Watershed Protection and Flood Prevention.

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. This program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

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²See <https://sam.gov/content/assistance-listings>.

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Nathan Jones,

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Natural Resources Conservation Service.

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