



DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS-2025-0003]

Notice of Intent to Prepare an Environmental Impact Statement for the Shortfoot Creek Watershed Plan, North Dakota

AGENCY: Natural Resources Conservation Service, U.S. Department of Agriculture (USDA).

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 Shortfoot Creek Watershed located within Sargent and Richland Counties, and North Dakota, Marshall and Roberts Counties, South Dakota. The proposed EIS will examine alternative solutions to provide flood damage reduction and 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*]. We will consider comments received after the close of the comment period 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-2025-0003. Follow the online instructions for submitting comments.

- *Mail or Hand Delivery:* Jonathan Petersen, USDA-NRCS, 220 E Rosser Ave, Bismarck, ND 58502-1458. In your comments, specify the docket ID-NRCS-2025-0003.

All comments received will be posted without change and made publicly available on www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Jonathan Petersen; telephone: (701) 530-2082; email: jonathan.petersen@usda.gov.

Individuals who require alternative means of communication should contact USDA Target Center at (202) 720-2600 (voice and text telephone (TTY] mode) or dial 711 for Telecommunications Relay service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

Purpose and Need

The primary purpose of the proposed action is flood damage reduction and watershed protection. Watershed planning is authorized under the Watershed Protection and Flood Prevention Act of 1954 (Pub. L. 83-566), as amended, and the Flood Control Act of 1944 (Pub. L. 78-534).

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 (NEPA) and the National Historic Preservation Act (NHPA). The following agencies have been consulted and their input requested in this planning effort: U.S. Environmental Protection Agency; U.S. Federal Emergency Management 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; Sargent County Water Resource District (local project

Sponsor); Sargent County Highway Department; Sargent County Sheriff's Office; Sargent County Commission; and Sargent County Emergency Management. NRCS is consulting on both NEPA and section 106 of the NHPA with the North Dakota State Historical Preservation Office and Tribal Nations.

This action is needed because the Shortfoot Creek watershed experiences \$677,800 in average annual flood damages due to cropland inundation and damage to roads. Approximately 78 percent of the watershed is farmed for row crops consisting predominantly of corn, soybeans, and spring wheat. Flooding causes disruptions to transportation by overtopping and washing out roads, bridges, and culverts.

Long duration inundation of cropland, particularly in spring floods, results in high transfer of nutrients from soil and residue back to Shortfoot Creek, the Wild Rice River, and Red River downstream. At the 2-year recurrence interval flood, 1,118 acres of cropland are flooded, at the 5-year 4,268 acres are flooded, at the 10-year 5,214 acres are flooded, and at the 100-year 7,293 acres are flooded. The Shortfoot Creek watershed contributes an average annual volume of 15,548 pounds of phosphorus and 70,176 pounds of nitrogen to downstream waterways.

Agricultural non-point source pollution from the U.S. portion of the Red River Basin is a major contributor to the ongoing eutrophication of Lake Winnipeg, the 10th largest freshwater lake in the world, which is degrading a \$102 million a year recreational fishing industry, \$25 million a year commercial fishing industry, and subsistence fishing by 14 First Nation communities along the lakeshore. Between 1994 and 2007, annual phosphorus loads to Lake Winnipeg increased 71 percent and nitrogen loads increased 18 percent. While the Red River contributes only 15 to 20 percent of overall annual runoff to the lake by volume, from 1994 through 2007 it contributed 70 percent of the total phosphorus load, largely in the form of inorganic dissolved phosphorus, and 78 percent of the annual total nitrogen load. The Wild Rice Watershed is rated within the top 20

percent of Red River Basin sub-watersheds for phosphorus delivery and the top 40 percent for nitrogen delivery. In total, 65 percent of total nitrogen and 75 percent of total phosphorus originates from cropland within the North Dakota portion of the Basin.

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 specifies that boundary waters or waters flowing across the boundary are not to be polluted to the injury of health and property to the other. The International Joint Commission (IJC) acts as the mediator for BWT, with International Red River Board (IRRB) established as the IJC sub entity for the Red River Basin. In 2019, IRRB recommended nutrient concentration and load target objectives for the international border crossing of the Red River to IJC, which were formally adopted in 2022 with the concurrence from the U.S. State Department and Global Affairs Canada. The reported average nutrient load for phosphorus in 2017 through 2021 was 170 percent of the standard and for nitrogen was 125 percent. The annual flow-averaged concentration of phosphorus exceeds the standard by 300 to 400 percent.

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. It is estimated that only 3 percent of tallgrass prairie in the Red River Basin remains unplowed and that 85 percent of wetlands were drained as of 1980. Drainage of remaining wetlands continues at a high rate as precipitation has continued to increase, 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, Including a No Action

The EIS objective is to formulate and evaluate alternatives that would provide flood damage reduction and watershed protection. The EIS is expected to evaluate two alternatives: one no action alternative and one action alternative.

The alternatives that may be considered for detailed analysis include:

- *Alternative 1 – No Action Alternative:* Taking no action would mean that no Federal action would be taken in the Shortfoot Creek Watershed and implementation of significant flood damage reduction, nutrient reduction, and large-scale wetland and wildlife habitat improvement 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.
- *Alternative 2 – Proposed Action Alternative – Shortfoot Creek Site 7:* The proposed action would construct the Shortfoot Creek Site 7 as a multi-purpose dry dam with interior features designed and operated for the purpose of flood damage reduction, nutrient reduction, and wetland/upland wildlife habitat. The dam would provide 1,250 acre-feet of temporary (less than 10 days inundation at the 10-year recurrence interval flood) floodwater retention for a 32.7 square mile drainage area. It would consist of a 1-mile embankment with a maximum height of 20 feet, 48-inch principal spillway conduit, and structural concrete auxiliary spillway. Reduction of dissolved inorganic phosphorus (DP) will be through two primary means. The first involves construction and operation of two constructed wetlands, totaling 130 acres, on the interior of the dry dam to which water during flood events would be routed with pump and pipelines, held to depths of 2 to 3 feet through the growing season. Low flows will continue down the creek to avoid impacts to aquatic species. 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 the floodplain 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 project also involves restoring natural sinuosity and channel dimensions to 2.6-miles of straightened or channelized creek upstream of the dam, which will result in restoration of 17.8 acres of riverine wetlands. A ditch plug will be installed to restore 2.8 acres of pothole wetlands. The 130 acres of constructed treatment wetlands will also provide wildlife habitat. Currently 203.4 acres of existing wetlands are hayed throughout the year and improvement to vegetation management to benefit wildlife will provide functional enhancement on those wetlands. In total, a 363-acre mosaic of 354 acres of enhanced, restored, and constructed wetlands and 9 acres of uplands along 2.6-miles of restored creek will be placed in a 50-year conservation easement and managed for wildlife habitat and nutrient reduction.

Summary of Expected Impacts

The EIS will be prepared as required by section 102(2)(C) of NEPA and NRCS regulations that implement NEPA in 7 CFR part 650.

An NRCS evaluation of this federally assisted action indicates that the proposed alternative may have a significant positive local, regional, national, or international impact on the environment. The project would reduce average annual cropland flood damages by \$130,400 and road damages by \$1,400 per year. Average annual loads of total phosphorus transported out of the Shortfoot Creek watershed would be reduced by 3,997 lbs. and total nitrogen would be reduced by 19,863 lbs. Restoration of natural riverine conditions and vegetation on 2.6-miles of Shortfoot Creek and its adjacent

floodplain will improve wildlife habitat. Construction of embankments will cause a loss of 4.1 acres of existing wetlands. The project would generate a net increase of 354 acres of enhanced, restored, and constructed wetlands and 9 acres of uplands along 2.6-miles of restored creek for the benefit of migratory birds and other wildlife species. Short term negative impacts during construction are anticipated regarding traffic, dust, vegetation, and noise.

Anticipated Permits and Authorizations

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

- *Clean Water Act (CWA) Section 404 permit.* Implementation of the proposed action would require a CWA section 404 permit from the USACE, 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 and National Pollutant Discharge Elimination System (NPDES).* The project would also require water quality certification under section 401 of CWA and permitting under Section 402 of NPDES, 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 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 Sargent County. Sargent 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 with Tribal Nations and the North Dakota State Historical Society are ongoing, as required by NHPA. The NRCS Class III Cultural Resources report recommendation for the alternative is “No Historic Properties Affected.” To date no concerns have been raised by any entities, however consultation under NHPA is ongoing.

Schedule of Decision-Making Process

A Draft EIS (DEIS) will be prepared and circulated for review and comment by agencies, Tribes, consulting parties, and the public for at least 45 days as required by the regulations in 7 CFR 650.13. The DEIS 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 DEIS.

NRCS will decide whether to implement one of the action alternatives as evaluated in the EIS. A Record of Decision will be completed after the required 30-day waiting period and will be publicly available. The responsible Federal official and decision maker for NRCS is Dan Hovland, North Dakota State Conservationist.

Public Scoping Process

Public scoping meetings will be held to further develop the scope of the DEIS. An initial scoping meeting was held on June 15, 2016, at the Sargent County Courthouse in Forman, ND. An additional public scoping meeting was held March 27, 2025, Sargent County Courthouse (2nd floor), 355 Main Street South. The meeting was both in-person and may be accessed virtually at <https://tinyurl.com/Shortfoot-Creek-Dam-Meeting>. A recording of the meeting may be accessed at: <https://www.nrcs.usda.gov/conservation-basics/conservation-by-state/north-dakota/shortfoot-creek-watershed-plan>.

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 review process, as amended. 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, consulting parties, and individuals that have special expertise, legal jurisdiction, or interest in the Shortfoot Creek 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.

The information about historic and cultural resources within the area potentially affected by the proposed project will assist NRCS in identifying and evaluating impacts to such resources in the context of both NEPA and NHPA.

NRCS will consult with Native American Tribes on a government-to-government basis in accordance with the regulations in 36 CFR 800.2 and 800.3, Executive Order 13175, and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources and historic properties, will be given due consideration.

Authorities

This document is published as specified by the NEPA regulations regarding publication of an NOI to issue an EIS (7 CFR part 650). Watershed planning is authorized under the Watershed Protection and Flood Prevention Act of 1954, as amended and the Flood Control Act of 1944.

Federal Assistance Program

The title and number of the Federal Assistance Programs, as found in the Assistance Listing,¹ 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.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded

¹See <https://sam.gov/content/assistance-listings>.

by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and text telephone) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any phone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at <https://www.usda.gov/oascr/how-to-file-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail: (1) mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250–9410; (2) Fax: (202) 690–7442; or (3) email: program.intake@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

Daniel Hovland,

North Dakota State Conservationist,

Natural Resources Conservation Service.

[FR Doc. 2025-11671 Filed: 6/24/2025 8:45 am; Publication Date: 6/25/2025]