

Resolution No. 2015-08

Policy Regarding the Mitigation of Converted Farmed Wetlands in Benefited Areas of Drainage District Improvement Projects in Clay County

WHEREAS the Board of Supervisors is charged under the law to conduct studies and to consider at public hearing, together with the owners of the benefited lands, the adoption of drainage improvements by and for drainage districts in the county.

WHEREAS drainage district improvements may be found by the USDA to cause the conversion of farmed wetlands subject to wetland conservation rules of the federal farm program and thereby cause the owners of the converted wetlands to be subjected to heavy penalties for violations of the program rules.

WHEREAS the Board believes it is important to establish a balanced and consistent policy that supports the inclusion of mitigation for converted farmed wetlands in drainage district projects and provides that drainage districts may choose to share the costs of mitigation with the owners of the converted farmed wetlands.

WHEREAS the Board anticipates that several drainage districts will in 2015 and later consider improvements which will, if approved at public hearing, result in the conversion of farmed wetlands in the benefited areas and the Board has learned that there is no affordable converted wetland mitigation currently available, but that mitigation is also anticipated to be available in the future.

WHEREAS farm program rules allow the owners and tenants of farmed wetland converted by drainage districts to avoid program penalties and retain eligibility if they do not crop the area of the converted farmed wetland.

WHEREAS the Board believes it is important for drainage districts to continue to support mitigation of farmed wetlands converted by drainage district improvement projects when affordable mitigation is not available so that the projects may be considered for approval and, if approved, be constructed all in a timely manner.

IT IS HEREBY RESOLVED that for all proposed drainage district improvements projects in the county that will hereafter be considered for adoption at public hearing in the county and which are under the sole jurisdiction of the Board, and subject to the following conditions, the drainage district may provide, from the drainage district's funds, a mitigation offset fee or credit of up to \$7,500 per farmed wetland acre to each owner of farmed wetland that will be converted by the drainage district project, the funds then to be used toward the owners' independent pursuit of compensatory mitigation if so desired.

- Condition 1. The drainage district determines either through a jurisdictional determination of the Corps of Engineers or by the opinion of the drainage district's appointed engineer that the farmed wetland is not subject to regulation under Section 404 of the federal Clean Water Act. [Note: If a farmed wetland is subject to Clean Water Act jurisdiction then the drainage district will be directly responsible for the regulatory agency project permits and associated mitigation requirements and no mitigation offset fee or credit will be provided under this policy.]

- Condition 2. An owner of a farmed wetland that may be converted by the proposed project must timely provide to the drainage district a copy of a USDA issued or approved certified wetland determination for land in the benefited area. So that the added cost of the mitigation offset may be included in the board's considerations, this documentation must be placed on file with the county before the time that the board finalizes its decision at public hearing to approve the construction of drainage improvements in the district. If the farmed wetland documentation is not timely provided then no mitigation offset fee or credit will be provided by the drainage district.
- Condition 3. The owner of a farmed wetland must exhaust the reasonable options available through the local or area USDA staff to minimize the size of the farmed wetland as may be available to them at or after the time of their receipt of the notice of the public hearing. If this is not done the Board reserves the option to independently assess the accuracy of the claimed farmed wetland acres and to reduce or eliminate the mitigation offset fee or credit provided for under this policy.
- Condition 4. Before credits or payments for a mitigation offset will be released to a farmed wetland owner the owner must provide a statement in writing from the USDA that the farmed wetland will be converted by the drainage district project and that continued cropping of the farmed wetland after it is converted will affect the owner's farm program eligibility. This statement is required even if the landowner is currently not a farm program participant.
- Condition 5. If a project is not completed and federal or state laws or regulations change prior to the release of the mitigation offsets provided for herein, and it has been determined that the drainage district may no longer transfer compensatory mitigation responsibilities to the farmed wetland owners in the manner provided for under this policy, then the mitigation offsets will be canceled. [Note: This will trigger a reevaluation of the mitigation needs of the project.]

The Board may alter this policy for each drainage district project as may be needed to accomplish the intent of the resolution, to account for unusual circumstances, to comply with changing laws and regulations, and to promote fairness.

The above and foregoing resolution was adopted by the Board of Supervisors of Clay County, Iowa, this 17th day of February, 2015 and the vote thereon being as follows:

Ayes: Anderson, Brockshus, Matthews, Skow. Nays: None. Abstentions: None. Absent: Supervisor Swanson.

/s/Joe Skow, Vice Chairperson, Clay County Board of Supervisors
ATTEST: /s/Marjorie A. Pitts, County Auditor