

Overcoming Policy and Permitting Challenges to Implementing Natural Infrastructure Solutions

A Natural Floodplain Functions Alliance Workshop

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Nebraska Case Study Information

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Introduction:

It is important to recognize that the participating agencies all have as a common part of their respective missions to better protect, restore, and enhance wetlands as efficiently and effectively as possible.

Nationwide Permit (NWP) #27 is for Aquatic Habitat Restoration, Establishment, and Enhancement Activities. Activities in waters of the United States associated with the restoration, enhancement, and establishment of tidal and non-tidal wetlands and riparian areas and the restoration and enhancement of non-tidal streams and other non-tidal open waters, provided those activities result in net increases in aquatic resource functions and services. Per the language in the Federal Register, NWP #27 is a tool that can be used to accomplish this by: 1) authorizing activities with minimal adverse environmental impacts in a timely manner; 2) allowing the U.S. Army Corps of Engineers (USACE) to focus its limited resources on more extensive evaluation of projects that have the potential for causing environmentally damaging adverse effects; and 3) reducing administrative burdens on the USACE and the regulated public, by efficiently authorizing activities that have minimal adverse environmental effects.

The Nebraska Game and Parks Commission (NGPC), U.S. Fish and Wildlife Service (USFWS), and the Natural Resources Conservation Service (NRCS) are the primary agencies that conduct voluntary wetland restorations in Nebraska. The staffs of these agencies are highly trained professionals with extensive experience in doing wetland restoration projects. The agencies nearly always work collaboratively on interagency and interdisciplinary teams that plan and oversee each restoration project.

For voluntary wetland restoration projects on private lands, we only work with willing landowners. On private lands projects, we need to meet the needs of both the landowner and the agencies. It should be emphasized that many projects proposed by landowners (e.g., digging “fish” ponds) are rejected or modified prior to seeking permits and agreeing to provide funding. Overall, the agencies are working very hard to do the right thing for the wetland resource, especially considering the following constraints:

- Many of our wetlands and their associated watersheds are highly altered.

- Our knowledge about how these systems historically functioned is unfortunately not perfect.
- When designing projects to address the alterations, we often face engineering constraints on what will work best to address the situation.
- Most of our projects are taking place on private lands. The consideration of what the landowner wants has to be taken into consideration. The project will not happen without the landowner's consent. At times, projects get modified from what we may feel is "optimal" to accommodate landowner needs, however, we do not move forward with a project unless we feel that the overall environmental gain will be positive and worth the cost.
- There are numerous funding constraints that influence what we are able to do, and when we need to complete a project. Many of the projects are paid for with funding sources that need to be expended by the end of a fiscal year or prior to a grant expiring.

Case Study:

The case study subject site consisted of a privately-owned property within the riverine floodplain located within Platte River basin. The wetland in question was negatively impacted by a drainage ditch that was dug in an attempt to drain both surface and sub-surface water in order to increase the amount of grazing lands. The drainage attempt was only marginally successful due to amount of hydrology present. Excavated spoil from drainage ditch had been piled within wetland footprint. The wetland was further impacted by sediment deposits from flood events. The altered hydrology resulted in a complete infestation of invasive hybrid cattail and an excessive accumulation of organic material.

As with all of our restoration projects, an interdisciplinary team was used to assess the site and develop a restoration plan that met the needs of the landowner and the partners involved. Planned restoration activities included filling the drainage ditch; removing spoil piles from the wetland footprint; excavating sediment, and invasive vegetation; chemical treatment of invasive vegetation; native vegetation establishment; and installing a dual purpose agricultural crossing/rock check structure to provide agricultural use access and also water velocity control while allowing fish passage.

We determined that this project would meet the conditions of Nationwide Permit #27. Pre-construction notice (PCN) is required by Regional Conditions attached to NWP #27 in Nebraska for working within the Platte River basin.

Impacts to the resource:

The delays associated with the case study site were very frustrating to the landowner and the agencies partnering on this project. Such delays, and the associated requests for more and more information, take valuable time and resources that would be better spent working on the next restoration project.

We also had to request grant extensions twice for two different grants involved. We likely would have lost funds from one of the grant sources but we were able to make an advanced purchase of rock to demonstrate we were making some progress on the project.

For this meeting, I was asked to submit one case study. Unfortunately, there is no one case study that demonstrates the real impacts of the permitting issues we have been dealing with. I feel that one very important point to make is that nearly every voluntary wetland restoration project is being delayed as we await authorization from the USACE. The cumulative effect of delaying nearly every voluntary restoration project has real impacts to our wetland resources. It takes up valuable and precious time from the people doing the restoration work (Nebraska Game and Parks Commission, U.S. Fish and Wildlife Service, Natural Resources Conservation Service, etc.) and this time could be spent doing more good restoration projects. Many of the funding sources that we use for voluntary restorations are grant funds with deadlines, so if permits are not granted in a timely manner, we sometimes are not able to get the funds spent or need grant extensions. Finally, when we are working on private lands with willing landowners we need to work to meet not only the needs of the wetland resource, but also the needs of the landowner. We have had cases where landowners have lost patience and not gone forward with a voluntary restoration project due to delays in getting permits.

Recommendations:

1. Pre-construction Notification (PCN): For NWP #27, a PCN is required for most projects in Nebraska. We have recommended to change the wording in the Nebraska Regional Conditions for NWP #27 to include the following language that is in line with the national guidance: *No PCN is required for NWP 27 when activities are conducted on non-Federal public lands and private lands, in accordance with the terms and conditions of a binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement between the landowner and the FWS, NRCS, FSA, NMFS, NOS, USFS or their designated state cooperating agencies.*
2. Better consistency in the information collected by the agencies: Continued training for staff on wetland delineation, functional assessment, and permit/regulatory compliance will help us collect the information needed.
3. Clarity on what information is needed when a permit application is required: It would be helpful to have a clear and detailed list of what the USACE needs for an application to be considered complete.
4. Better responsiveness when a permit application is required: There is wording in the Code of Federal Regulations (CFR) that indicates that the USACE is supposed to acknowledge receipt of the application as soon as they receive it, they are supposed to request any additional information needed within 15 days, and they are supposed to formally respond within 45 days of receiving the permit application or we can presume that the project qualifies for a NWP.
5. Minimizing added conditions: When the USACE issues a NWP #27 authorization, they often add additional conditions that can create a substantial additional workload for the agencies. NWP #27 is already conditioned when it is issued, so it seems unnecessary to add additional conditions except in rare circumstances.
6. Communication: Better communication is always helpful. The agencies doing the voluntary restorations and the regulatory agencies need to have a good understanding of what each needs and the issues that they are dealing with. This can be addressed through regular Interagency meetings and periodic site visits/tours.