

**§ 624.3 Scope.**

EWP Program technical and financial assistance may be made available to a qualified sponsor, or landowners when a floodplain easement is the selected alternative by the Secretary of Agriculture, upon a qualified sponsor or landowner's request when a Federal emergency is declared by the President or when a local emergency is declared by the NRCS State Conservationist. The EWP Program is designed for emergency recovery work, including the purchase of floodplain easements. Emergency watershed protection is authorized in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

**§ 624.4 Definitions.**

(a) *Defensibility* means the extent to which an action is:

- (1) More beneficial than adverse in the extent and intensity of its environmental and economic effects;
- (2) In compliance with Federal, State, and local laws;
- (3) Acceptable to affected individuals and communities;
- (4) Effective in restoring or protecting the natural resources;
- (5) Complete with all necessary components included; and
- (6) Efficient in achieving the desired outcome.

(b) *Exigency* means those situations that demand immediate action to avoid potential loss of life or property, including situations where a second event may occur shortly thereafter that could compound the impairment, cause new damages or the potential loss of life if action to remedy the situation is not taken immediately.

(c) *Floodplain easement* means a reserved interest easement, which is an interest in land, defined and delineated in a deed whereby the landowner conveys all rights and interest in the property to the grantee, but the landowner retains those rights, title, and interest in the property which are specifically reserved to the landowner in the easement deed.

(d) *Imminent threat* means a substantial natural occurrence that could

cause significant damage to property or threaten human life in the near future.

(e)(1) *Limited resource area* is defined as a county where:

- (i) Housing values are less than 75 percent of the State housing value average; and
- (ii) Per capita income is 75 percent or less than the National per capita income; and
- (iii) Unemployment is at least twice the U.S. average over the past 3 years based upon the annual unemployment figures.

(2) NRCS will use the most recent National census information available when determining paragraphs (e)(1)(i) and (ii) of this section.

(f) *Natural occurrence* includes, but is not limited to, floods, fires, windstorms, ice storms, hurricanes, typhoons, tornadoes, earthquakes, volcanic actions, slides, and drought.

(g) *Project sponsor* means a State government or a State agency or a legal subdivision thereof, local unit of government, or any Native American tribe or tribal organization as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), with a legal interest in or responsibility for the values threatened by a watershed emergency; is capable of obtaining necessary land rights; and is capable of carrying out any operation and maintenance responsibilities that may be required.

(h) *Watershed emergency* means adverse impacts to resources exist when a natural occurrence causes a sudden impairment of a watershed and creates an imminent threat to life or property.

(i) *Watershed impairment* means the situation that exists when the ability of a watershed to carry out its natural functions is reduced to the point where an imminent threat to health, life, or property is created. This impairment can also include sediment and debris deposition in floodplains and upland portions of the watershed.

**§ 624.5 Coordination.**

(a) If the President declares an area to be a major disaster area, NRCS will provide assistance which will be coordinated with the Federal Emergency Management Agency (FEMA) or its

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designee. FEMA is the lead federal agency for Presidentially-declared natural disasters.

(b) When an NRCS State Conservationist determines that a watershed impairment exists, but the President does not declare an area to be a major disaster area, FEMA does not coordinate assistance. In this situation, NRCS will assume the lead, provide assistance, and coordinate work with the appropriate State office of emergency preparedness and other Federal, tribal, or local agencies involved with emergency activities, as appropriate.

(c) In the case where the watershed impairment exists solely on FS System lands, the FS will determine the existence of the impairment, assume the lead, provide assistance and coordinate work with the appropriate State office of emergency preparedness and other Federal, tribal, or local agencies involved with emergency activities, as appropriate.

### § 624.6 Program administration.

(a) *Sponsors.* (1) When the State Conservationist declares that a watershed impairment exists, NRCS may, upon request, make assistance available to a sponsor which must be a State or political subdivision thereof, qualified Indian tribe or tribal organization, or unit of local government. Private entities or individuals may receive assistance only through the sponsorship of a governmental entity.

(2) Sponsors must:

(i) Contribute their share of the project costs, as determined by NRCS, by providing funds or certain services necessary to undertake the activity. Contributions that may be applied towards the sponsor's applicable cost-share of construction costs include:

(A) Cash;

(B) In-kind services such as labor, equipment, design, surveys, contract administration and construction inspection, and other services as determined by the State Conservationist; or

(C) A combination of cash and in-kind services;

(ii) Obtain any necessary real property rights, water rights, and regulatory permits;

(iii) Agree to provide for any required operation and maintenance of the completed emergency measures; and

(iv) Comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended), and 2 CFR parts 25 and 170.

(b) *Eligibility.* NRCS will provide assistance based upon the NRCS State Conservationist's determination that the current condition of the land or watershed impairment poses a threat to health, life, or property. This assistance includes EWP practices associated with the removal of public health and safety threats, and restoration of the natural environment after disasters, including acquisition of floodplain easements.

(1) Priority EWP assistance is available to alleviate exigency situations. NRCS may approve assistance for temporary correction practices to relieve an exigency situation until a more acceptable solution can be designed and implemented.

(2) *Limitations.* (i) In cases where the same type of natural event occurs within a 10-year period and a structural measure has been installed or repaired twice within that period using EWP assistance, then EWP assistance is limited to those sites eligible for the purchase of a floodplain easement as described in § 624.10 of this part.

(ii) EWP assistance will not be used to perform operation or maintenance, such as the periodic work that is necessary to maintain the efficiency and effectiveness of a measure to perform as originally designed and installed.

(iii) EWP assistance will not be used to repair, rebuild, or maintain private or public transportation facilities, public utilities, or similar facilities.

(iv) EWP assistance, funded by NRCS, will not be provided on any Federal lands if such assistance is found to augment the appropriations of other Federal agencies.

(v) EWP assistance is not available for repair or rehabilitation of non-structural management practices, such as conservation tillage and other similar practices.